



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD

Introduction

This matter dealt with an application by the Landlords for compensation for damage or loss under the Act or tenancy agreement and to keep the Tenants' security deposit in partial payment of that amount.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on March 2, 2011. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation and if so, how much?
2. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on September 1, 2010. Rent is \$1,700.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$850.00 at the beginning of the tenancy.

In previous (direct request) proceedings held on January 19, 2011, the Landlords were granted an Order of Possession to take effect 2 days after service of it on the Tenants and a Monetary Order for unpaid rent for January 2011. The Tenants applied for a Review of that Decision which was granted on February 1, 2011 and a new hearing was ordered. At the new hearing held on February 18, 2011, the Parties entered into an agreement whereby the Landlords were granted an Order of Possession to take effect on March 31, 2011 and the Tenants agreed to provide the Landlords with a cheque in the amount of \$1,690.00 in payment of February 2011 rent and a cheque in the amount of \$1,700.00 in payment of March 2011 rent. The Tenants agreed to send those cheques to the Landlords by registered mail no later than February 25, 2011.

The Landlords claim they have received no payments from the Tenants for February or March 2011 rent pursuant to the written agreement made on February 18, 2011. The Landlords provided a copy of a letter from the business where they collect their mail (and which is their address for service). The deponent of that letter states that as of March 14, 2011, no registered mail has been delivered to the Landlords' mail box.

Analysis

Based on the evidence of the Landlords and in the absence of any evidence from the Tenants to the contrary, I find that the Tenants breached the agreement they made on February 18, 2011 and have not provided the Landlords with rent payments for February and March 2011. Consequently, I find that the Landlords are entitled to recover unpaid rent in the amount of \$3,390.00 as well as their registered mail expenses of \$20.94 and the \$50.00 filing fee for this proceeding.

I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of the monetary award. The Landlords will receive a Monetary Order for the balance owing as follows:

Unpaid Rent for February 2011:	\$1,690.00
Unpaid Rent for March 2011:	\$1,700.00
Registered Mail Expenses:	\$20.94
Filing Fee:	<u>\$50.00</u>
Subtotal:	\$3,460.94
Less: Security Deposit:	(\$850.00)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$2,610.94

Conclusion

A Monetary Order in the amount of **\$2,610.94** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 15, 2011.

Residential Tenancy Branch