



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MMD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and damage or loss and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on March 18, 2011, in the morning, she served each tenant copies of the Application for Dispute Resolution and Notice of Hearing, at the office in the rental building.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenants did not appear at the hearing.

Preliminary Matter

As the tenants vacated the rental unit on March 29, 2011, the landlord no longer requires an Order of possession.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

Is the landlord entitled to loss of April, 2011, rent revenue?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2010, rent was \$995.00 per month, due on the first of each month. A copy of the tenancy agreement was submitted as evidence; late

payment fees were \$20.00 and NSF fees of \$25.00. A parking agreement signed November 5, 2010, indicated a \$10.00 monthly fee.

The landlord stated that on March 8, 2011, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of March 19, 2011, was served by posting to the tenant's door.

The tenants did not pay March rent and did not move out on the effective date of the Notice; therefore, the landlord was not confident that the unit would be available for rent effective April 1, 2011. The landlord obtained possession of the unit on March 29, 2011.

The landlord is claiming:

- \$995.00 - March , 2011 rent;
- \$10.00 March parking fee;
- \$25.00 NSF fee for March cheque;
- \$995.00 loss of April, 2011 rent revenue;
- \$20.00 April rent late fee and
- \$10.00 April parking.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenants received the Notice to End Tenancy on March 11, 2011.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was March 21, 2011.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on March 21, 2011, pursuant to section 46 of the Act.

The landlord was not given any indication by the tenants that they would move out; they then over held beyond the effective date of the Notice ending tenancy. The landlord could not rent the unit effective April 1, 2011, as they were not confident they would have vacant possession.

Therefore, I find that the landlord is entitled to unpaid March, 2011 rent, parking fee and NSF fee in the sum of \$1,030.00 plus loss of April rent revenue in the sum of \$995.00.

The claim for April late fee and parking is dismissed as the loss was for revenue only, not rent owed. I find that the tenancy ended March 29, 2011, when the landlord obtained possession.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$2,075.00, which is comprised of \$995.00 March, 2011, rent; \$10.00 March parking; \$25.00 March NSF fee and loss of April, 2011 rent revenue in the sum of \$995.00; plus filing fee costs.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,075.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

Dated: April 11, 2011.
