



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlords on March 16, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on March 5, 2011. The landlord also sought a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding, and authorization to retain the security and pet damage deposits in set off against the balance owed.

Issues to be Decided

This application requires a decision on whether the landlords are entitled to an Order of Possession and a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, and authorization to retain the security and pet damage deposits..

Background and Evidence

This tenancy began on October 23, 2010. Rent is \$850 per month and the landlords hold a security deposit of \$425 and a pet damage deposit of \$100 paid prior to the beginning of the tenancy.

During the hearing, the landlord gave evidence that Notice to End Tenancy had been served when the tenants had failed to pay \$425 of the rent due on March 1, 2011.

The parties concurred that the tenants had offered the remaining \$425 on March 18, 2011; however, the landlord states she refused to accept it out of concern that doing so would reinstate the tenancy. The tenants state that the payment was not returned.

In the interim, the tenants did not pay the rent for April 2011.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due. Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not make application to dispute the notice and I accept the evidence of the landlord that they did not pay the full rent within five days of receiving the notice and their offer to pay on March 18, 2011 was outside the five days.

Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date under the Notice to End Tenancy which was March 15, 2011 and they are, therefore, overholding.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenants.

I further find that, including recovery of the filing fee for this proceeding and authorization to retain the security and pet damages deposits which I grant under section 72 of the *Act*, the tenants owe the landlord an amount calculated as follows:

Unpaid rent for March 2011	\$ 425.00
Rent/loss of rent for April 2011	850.00
Filing fee	<u>50.00</u>
Sub total	\$1,325.00
Less retained security deposit (no interest due)	- 425.00
Less retained pet damage deposit (no interest due)	- 100.00
TOTAL	\$ 800.00

I note that while the half rent for March 2011 was contested, if the tenants are able to prove that it was paid, such proof should be submitted in the event of a settlement hearing before, the Provincial Court. For the present however, I have accepted the evidence of the landlord.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia to take effect two days from service of it upon the tenants.

In addition to authorization to retain the security and pet damage deposits deposit in set off against the balance owed, the landlords' copy of this decision is also accompanied by a Monetary Order for \$800.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlords remain at liberty to make application for any damages as may be ascertained at the conclusion of the tenancy.

April 6, 2011