



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, to recover expenses for strata fines incurred by the Tenants and the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord (J.H.) said he served the Tenants on March 30, 2011 by registered mail with the Application and Notice of Hearing (the "hearing package"). Section 90(a) 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 packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are the Landlords entitled to recover strata by-law fines incurred by the Tenants?
4. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on July 1, 2010 and expires on June 30, 2011. Rent is \$1,200.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$600.00 at the beginning of the tenancy.

The Landlords said the Tenants had rent arrears of \$400.00 for February 2011 and did not pay March 2011 rent when it was due. As a result, on March 14, 2011 the Landlords served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 14, 2011 by posting it to the rental unit door. The Landlords said the Tenants have not paid these rent arrears and have not paid rent for April, 2011.

The Landlords also claim that the Tenants contravened a Strata by-law on 2 occasions (September 5, 2010 and January 31, 2011) by having an uninsured vehicle parked in the underground parking area of the rental property. As a result, the Landlords said they (as owners) had to pay \$50.00 for each contravention for a total of \$100.00.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice (March 27, 2011) and they must vacate the rental unit at that time.

I find that the Landlords posted the 10 Day Notice to End Tenancy for Unpaid Rent on the Tenants door on March 14, 2011. Under s. 90 of the Act, the Tenants are deemed to have received the Notice 3 days after it was posted, or on March 17, 2011. Consequently, the Tenants would have had to pay the amount showing as rent arrears on the Notice or apply to dispute that amount no later than March 22, 2011. I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenants.

I also find that the Landlords are entitled to recover rent arrears in the amount of \$400.00 for February 2011, \$1,200.00 for March 2011, pro-rated rent of \$800.00 for April 1-20, 2011 and pro-rated loss of rental income for April 21-30, 2011 of \$400.00. I further find that the Landlords are entitled to recover strata fines incurred by the Tenants of \$100.00 as well as the \$50.00 filing fee for this proceeding.

I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlords will receive a Monetary Order for the balance owing as follows:

Rent arrears:	\$2,400.00
Loss of rental income:	\$400.00
Strata Fines:	\$100.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,950.00
Less: Security Deposit:	(\$600.00)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$2,350.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$2,350.00** have been issued to the Landlords. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: April 20, 2011.

Residential Tenancy Branch