



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for a loss of rental income and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of hearing (the “hearing package”) by registered mail on March 16, 2011. The Landlord said that according to the Canada Post online tracking system, the Tenants refused service of the hearing packages and they were returned to her. 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 Landlord, I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in the Tenants’ absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started on March 3, 2011. Rent is \$1,800.00 per month payable in advance on the 1st day of each month. The Landlord said the Tenants gave her a cheque in the amount of \$2,700.00 on March 3, 2011 in payment of rent for that month and for a security deposit (of \$900.00).

The Landlord said she presented the Tenants’ cheque for payment on a number of occasions to the financial institution named on the cheque however there were insufficient funds in the Tenants’ account. The Landlord said she advised the Tenants that their cheque could not be negotiated and asked them to leave if they were not going to pay, however they told her to serve them with a Notice. Consequently, on March 7, 2011, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 6, 2011 by posting a copy of it on the rental unit door. The Landlord said she watched as an occupant of the rental unit removed the Notice from the door a few minutes later. The Landlord said the Tenants have not paid rent for March or April 2011.

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 and they must vacate the rental unit at that time. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or on March 10, 2011. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than March 15, 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 Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenants. I also find that the Landlord is entitled to recover unpaid rent of \$1,800.00 for March 2011.

The Landlord also sought to recover rent for April 2011. RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy (by serving a tenant with a Notice to End Tenancy) and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give a landlord one full, calendar month's notice that they are ending the tenancy. Consequently, the earliest the Tenants could have ended the tenancy (had they done so on March 10, 2011 after receiving the 10 Day Notice) would have been April 30, 2011. As a result, I find that the Landlord is entitled to recover loss of rental income for April, 2011.

However, s. 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. Consequently, I find that the Landlord is entitled to recover a loss of rental income for April 1 – 15, 2011 in the amount of \$900.00 and may reapply for compensation for a further loss of rental income for April 16 – 30, 2011 if she is unable to re-rent the rental unit for that period of time. As the Landlord has been successful in this matter, I also find pursuant to s. 72 of the Act that she is entitled to recover from the Tenants the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$2,750.00** have been issued to the Landlord. 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 04, 2011.

Residential Tenancy Branch