



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") in person on March 30, 2011 which was witnessed by the owner of the rental property. 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. Do the Landlords have grounds to end the tenancy?
2. Are there rent and utility arrears and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on December 1, 2010 and ended on April 4, 2011 when the Tenants moved out. Rent was \$1,000.00 per month payable in advance on the 14th day of each month plus one half of the utilities (hydro and gas) for the rental property. The Tenants paid a security deposit of \$500.00 at the beginning of the tenancy.

The Landlords said the Tenants did not pay rent for the period, March 14 – April 13, 2011, when it was due and as a result, on March 21, 2011, the Landlords served the Tenants in person with a 10 Day Notice to End Tenancy dated March 21, 2011. The Landlords said the Tenants have not paid the overdue rent and have not paid utilities for January, February, March and April 2011.

Analysis

The Landlords said the Tenants removed substantially all of their belongings by April 4, 2011 but left behind 4 pieces of furniture. The Landlords also provided a witness statement of the rental property owner dated April 1, 2011 who claimed that the Tenants advised him they would vacate the rental unit by April 3, 2011. In the circumstances, I find that the tenancy ended on or about April 4, 2011 when the Tenants moved out. As a result, I find that an Order of Possession is unnecessary and the Landlords' application for one is dismissed without leave to reapply.

In the absence of any evidence from the Tenants to the contrary, I find that there are rent arrears for the period, March 14 – April 13, 2011 in the amount of \$1,000.00. I also find that there are utility arrears of \$482.00 as follows:

	<u>Hydro</u>	<u>Fortis Gas</u>
January 2011:	\$72.50	\$48.00
February 2011:	\$72.50	\$48.00
March 2011:	\$72.50	\$48.00
April 2011:	<u>\$72.50</u>	<u>\$48.00</u>
Subtotal:	\$290.00	\$192.00

The Landlords also sought to recover a loss of rental income for the period, April 14 – May 13, 2011. Section 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's application for a loss of rental income is premature; they must first try to re-rent the rental unit for all or part of this period and may re-apply for compensation if they are unable to do so.

As the Landlords have been successful in this matter, I also find that they are entitled to recover from the Tenants the \$50.00 filing fee they paid for this proceeding. Consequently, I find that the Landlords have made out a total monetary claim for \$1,532.00. 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 of \$1,032.00.

Conclusion

The Landlords' application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of **\$1,032.00** 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: April 18, 2011.

Residential Tenancy Branch