



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on May 16, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absences.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on February 1, 2009 as a month to month tenancy. Rent is \$695.00 per month payable on the last day of each month. The Tenant paid a security deposit of \$347.50 on February 1, 2009.

The Landlord said that the Tenant did not pay \$695.00 of rent for April, 2011 and \$30.00 of rent for May, 2011 when it was due and as a result, on May 1, 2011, she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated May 1, 2011 on the Tenants door.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord said she is requesting an Order of Possession with an effective vacancy date for as soon as possible. The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

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 pay the overdue rent or apply for dispute resolution. If the 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 ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy three days after posting it on the door, or on May 3, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than May 8, 2011.

I find that the Tenant has not paid the overdue rent and has 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 the Order on the Tenants.

I also find that the Landlord is entitled to recover unpaid rent for April and May, 2011 in the amount of \$725.00.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$	725.00	
	Recover filing fee	\$	50.00	
	Subtotal:			\$ 775.00
Less:	Security Deposit	\$	347.50	
	Subtotal:			\$ 347.50
	Balance Owing			\$ 427.50

Conclusion

An Order of Possession effective 2 days after service upon the Tenants and a Monetary Order in the amount of \$427.50 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*.

Residential Tenancy Branch