



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, 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 and utilities, 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") by registered mail on June 2, 2011. According to the Canada Post online tracking system, the Tenants received this mail on June 9, 2011. 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. Are there rent and utility arrears and if so, how much?
2. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on March 1, 2011 and expires on February 29, 2012. Rent is \$800.00 per month payable on the 1st day of each month. Pursuant to a term of the addendum to the Parties' tenancy agreement, the Tenants are also responsible for 50% of the utilities for the rental property (which is based on an equal payment plan) and these payments are also due in advance on the 1st day of each month. The Tenants paid a security deposit of \$400.00 at the beginning of the tenancy.

The Landlords said the Tenants did not pay rent in full for March and May 2011 and had utility arrears for a number of months and as a result, on May 12, 2011, the Landlords served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 12, 2011. The Landlords said the Tenants did not pay these arrears but on May 27, 2011, they received a payment of \$869.00 for June rent and part of June's utilities. The Landlords said they gave the Tenants a receipt for this payment stating it was accepted for "use and occupancy only." The Landlords said the Tenants still have rent arrears of \$280.00 and utility arrears of \$428.00.

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 and/or utilities or (if they believe the amount is not owed) 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. I find that the Tenants were served in person on May 12, 2011 with a 10 Day Notice to End Tenancy. Consequently, the Tenants would have had to pay the amount(s) on the Notice or apply to dispute that amount ***no later than May 17, 2011***.

I find that the Tenants did not pay the overdue rent or utilities by May 17, 2011 and did not apply 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. In the absence of any evidence from the Tenants to the contrary, I also find that the Landlords are entitled to recover rent arrears in the amount of \$280.00 (representing a shortfall of \$140.00 for both March and May 2011). I find that the Landlords are also entitled to recover utility arrears as follows:

Gas:	March, 2011	\$69.00
	May, 2011	\$69.00
Electricity:	March, 2011	\$72.50
	April, 2011	\$72.50
	May, 2011	\$72.50
	June, 2011	<u>\$72.50</u>
	Subtotal:	\$428.00

I also find pursuant to s. 72(1) of the Act that the Landlords are entitled to recover from the Tenants 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 and utility arrears. The Landlords will receive a monetary order for the balance owing as follows:

Rent arrears:	\$280.00
Utility arrears:	\$428.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$758.00
Less: Security Deposit:	(\$400.00)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$358.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$358.00** 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: June 21, 2011.

Residential Tenancy Branch