



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, 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 loss or damage under the Act or tenancy agreement, 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 personal delivery on June 14, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

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. Are there losses or damages to the Landlord and if so how much?
5. Is the landlord entitled to compensation for loss or damage and if so how much?
6. Is the Landlord entitled to keep the Tenant's security and pet deposits?

Background and Evidence

This tenancy started on June 1, 2009 as a 1 year fixed term tenancy with an expiry date of May 30, 2010 and then it renewed on a month to month basis. Rent is \$900.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$ 450.00 and a pet deposit of \$450.00 on June 1, 2010.

The Landlord said that the Tenant did not pay \$900.00 of rent for June, 2011 when it was due and as a result, on June 2, 2011 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2011 to the Tenants. The Landlord said the Tenants have unpaid rent for July, 2011 in the amount of \$900.00 as well.

The Tenant said they are living at the rental unit and the Tenant said they will be moving out, but they are not sure when. The Tenant said they hope to be out of the rental unit by the end of July, 2011.

The Landlord also said she is seeking to recover a \$25.00 late payment fee that is written into the Tenancy agreement for June and July, 2011 and the Landlord requested to recover the \$50.00 filing fee for this proceeding.

The Tenant said he agrees that they have unpaid rent for June and July, 2011 in the amount of \$900.00 for each month totally \$1,800.00.

The Landlord said she is requesting an Order of Possession with an effective vacancy date 2 days after service of the order on the Tenants.

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 that day if it is personally delivered to the Tenant, or on June 2, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than June 7, 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 48 hours after service of it on the Tenants.

I also find that the Landlord is entitled to recover unpaid rent for June, 2011, in the amount of \$900.00 and July, 2011 in the amount of \$900.00. I further find that the Landlord is entitled to recover the late charge of \$25.00 each for June and July, 2011.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenants 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 Tenants' security deposit of \$450.00 and the pet deposit of \$450.00 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,800.00	
	Late payment fees(2)	\$ 50.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,900.00
Less:	Security Deposit	\$ 450.00	
	Pet Deposit	\$ 450.00	
	Subtotal:		\$ 900.00
	Balance Owing		\$1,000.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$1,000.00 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*.

Residential Tenancy Branch