



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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 as well as to recover the filing fee for this proceeding.

The Landlord (B.H.) said he served the Tenants in person on August 11, 2011 with the Application and Notice of Hearing (the "hearing package") and also by registered mail on August 18, 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. Do the Landlords have grounds to end the tenancy?
2. Are there rent and utility arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started in March of 2009. There is no written tenancy agreement. The Landlord (B.H.) said the rent is \$1,570.00 per month payable in advance on the 1st day of each month plus 60% of the utilities (gas and hydro) for the rental property.

The Landlord said the Tenants did not pay rent for May, June and July, 2011 and as a result, on August 2, 2011, he served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 31, 2011. The Landlord said the Tenants did not pay those rent arrears and have not paid rent for August and September 2011. The Landlord also said that the Tenants have utility arrears in the total amount of \$138.00.

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 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 August 2, 2011 with a 10 Day Notice dated July 31, 2011. Consequently, the Tenants had until August 8, 2011 to either pay the overdue rent or to apply for dispute resolution to dispute the alleged rent arrears.

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 Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenants. I also find that the Landlords are entitled to recover rent arrears in the amount of \$6,280.00 for May to August, 2011, pro-rated rent of \$628.00 for the period, September 1 – 12, 2011, and a pro-rated loss of rental income for the period, September 13 – 30, 2011 in the amount of \$942.00.

The Landlords did not provide any evidence (such as utility invoices) in support of their claim for unpaid utilities and the 10 Day Notice dated July 31, 2011 does not allege that there are any unpaid utilities. Consequently, the Landlords' application to recover unpaid utilities is dismissed without leave to reapply.

The Landlords are entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$100.00 filing fee they paid 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 **\$7,950.00** 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: September 12, 2011.

Residential Tenancy Branch