



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC
OPR, OPC, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 7, 2011 and to cancel a One Month Notice to End Tenancy for Cause dated August 22, 2011. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, 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 Landlord's agent, C.A., said she served the Tenants on September 15, 2011 by registered mail with the Application and Notice of Hearing (the "hearing packages"). The Landlord's agent, C.A. said she also served the Tenants on September 16, 2011 by registered mail with the Landlord's amended hearing packages. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing packages and amended hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence. The Landlord's agent admitted that she received a copy of the Tenants' hearing package.

Issue(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 keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on April 1, 2011 and expires on March 31, 2012. Rent is \$875.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$437.50 at the beginning of the tenancy.

The Landlord's agent, C.A., said she served the Tenants on August 22, 2011 with a One Month Notice to End Tenancy for Cause dated August 22, 2011 by posting it to the rental unit door. C.A. said the Tenants did not pay rent for September 2011 when it was due and as a result, on September 7, 2011, C.A. said she served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 7, 2011 by

posting it to the rental unit door. C.S. said the Tenants have not paid the rent arrears for September 2011 and have not paid rent for October 2011.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a 10 Day 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.

Although the Tenants applied to cancel the 10 Day Notice within the 5 days granted under s. 46(4) of the Act, I find that there are no grounds for their application. In the absence of any evidence from the Tenants to the contrary, I find that rent for September 2011 was due and unpaid on September 7, 2011 when they were served with the 10 Day Notice and that the rent arrears have still not been paid. Consequently, the Tenants' application to cancel this Notice is dismissed without leave to reapply and the Landlord is entitled pursuant to s. 55(2)(b) to an Order of Possession to take effect 2 days after service of it on the Tenants.

I also find that there are no grounds for the Tenants' application to cancel the One Month Notice to End Tenancy for Cause dated August 22, 2011. In particular, I find that the Tenants were served with this Notice when it was posted to the rental unit door on August 22, 2011. Pursuant to s. 90 of the Act, the Tenants were deemed to have received this Notice to End Tenancy 3 days later or on August 25, 2011. Consequently, under s. 47(4), the Tenants, had 10 days to apply for dispute resolution to cancel the Notice (or until **September 6, 2011 at the latest**) and if they failed to do so, they are deemed pursuant to s. 47(5) to have accepted that the tenancy will end on the effective date of the Notice (September 30, 2011) and they must move out on that date. The Tenants applied to cancel the One Month Notice on September 7, 2011. Consequently, I find that the Tenants' application to cancel the One Month Notice must also be dismissed without leave to reapply and the Landlord is entitled pursuant to s. 55(2)(b) to an Order of Possession to take effect 2 days after service of it on the Tenants on this basis as well.

I also find that the Landlord is entitled to recover rent arrears for September 2011 in the amount of \$875.00, rent for October 1 – 4, 2011 in the pro-rated amount of \$112.90 and a loss of rental income for October 5 – 15, 2011 in the pro-rated amount of \$310.48 as well as the \$50.00 filing fee for this proceeding. Section 7(2) of the Act requires a party who suffers damages to mitigate their losses. Consequently, the Landlord has an obligation to try to re-rent the rental unit as soon as possible to minimize any loss of rental income. If the Landlord's agents are unable to re-rent the rental unit for the balance of October 2011, they may re-apply for a further loss of rental income.

I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit of \$437.50 in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing as follows:

Rent arrears September 2011:	\$875.00
Rent arrears October 2011:	\$112.90
Loss rental income Oct. 2011:	\$310.48
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,348.38
Less: Security Deposit:	(\$437.50)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$910.88

Conclusion

The Tenants' application is dismissed without leave to reapply. An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$910.88** 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*.

Dated: October 04, 2011.

Residential Tenancy Branch