



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 Landlords 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 and pet damage deposit in partial payment of those amounts.

The Landlord, A.D., said she served the Tenants with the Application and Notice of Hearing (the "hearing packages") by leaving a copy of them with another adult occupant of the rental unit on October 20, 2011. Section 89 of the Act says that an Application for Dispute Resolution must be served on a tenant either in person or by registered mail to their residence. The Tenant, J.S., admitted that the Tenants received the hearing packages and in these circumstances, I find pursuant to s. 71(2)(c) of the Act that the Tenants were sufficiently served with the Landlords' hearing packages for the purposes of the Act.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit and pet damage deposit?

Background and Evidence

This fixed term tenancy started on December 1, 2010 and expires on November 30, 2011. Rent is \$850.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$425.00 and a pet deposit of \$425.00 at the beginning of the tenancy. The Tenant J.S., said the Tenant, B.L., moved out of the rental unit on or about October 25, 2011.

The Landlord, A.D., said the Tenants had rent arrears of \$3.34 from September 2011 and did not pay rent for October 2011 in full when it was due and as a result, on October 2, 2011, she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2011 on the rental unit door. The Tenants claim the 10 Day Notice was posted on October 14, 2011. The 10 Day Notice alleged that arrears of \$570.01 were owed as of October 1, 2011. The Landlord, A.D., said the Tenants made

a partial payment of \$350.00 on October 2, 2011 and another payment of \$283.33 on October 26, 2011 for which they were given receipts indicating that the payments were accepted "for use and occupancy only." The Parties agree that the Tenants currently have rent arrears of \$786.68 for November 2011.

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 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 14, 2011 at the latest. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or on October 17, 2011. Consequently, the Tenants would have had to pay the rent arrears in full or apply for dispute resolution to dispute that amount ***no later than October 24, 2011*** (given that the 22nd fell on a non-business day).

I find that the Tenants did not pay the overdue rent within the 5 days granted (or by October 24, 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. I also find that the Landlords are entitled to recover rent arrears for the period November 1 – 8, 2011 in the pro-rated amount of \$163.35 and a loss of rental income for the period, November 9 – 30, 2011 in the pro-rated amount of \$623.33. I further find that the Landlords are entitled to recover 2 late payment fees (for September and October 2011) of \$25.00 each pursuant to a term of the Parties' tenancy agreement to that effect as well as 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 and pet damage deposit in partial payment of the rent arrears. The Landlords will receive a Monetary Order for the balance owing as follows:

Rent arrears:	\$163.35
Loss of rental income:	\$623.33
Late fees:	\$50.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$886.68
Less: Security Deposit:	(\$425.00)
Pet Deposit:	<u>(\$425.00)</u>
Balance Owing:	\$36.68

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$36.68** 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: November 08, 2011.

Residential Tenancy Branch