



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding, to keep the Tenant's security deposit in partial payment of those amounts and for other considerations.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on October 11, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

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. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started in the end of December 2010 as a month to month tenancy. Rent is \$750.00 per month payable in advance of the 1st day of each month. The Tenant did not pay a security deposit.

The Landlord said that the Tenant did not pay \$750.00 of rent for August, 2011 when it was due and as a result, on September 2, 2011 he personally delivered 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2011 to the Tenants. The Landlord said the Tenants also have unpaid rent for September, 2011 of \$750.00, October, 2011 of \$750.00 and November, 2011 of \$750.00.

The Landlord further indicated that the Tenants are living at the rental unit and the Landlord does not know what the Tenants' plans are. The Landlord requested an Order of Possession if he is successful for as soon as possible.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

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 on the day the Notice was personally delivered to the Tenants or on September 2, 2011. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than September 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 Tenant.

I also find that the Landlord is entitled to recover unpaid rent for August in the amount of \$750.00. I further find that the Landlord is entitled to recover unpaid rent for September, October and November, 2011 in the total amount of \$2,250.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears: (4months @ \$750.00)	\$ 3,000.00
Recover filing fee	\$ 50.00
Subtotal:	\$ 3,050.00
Balance Owing	\$ 3,050.00



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Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$3,050.00 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*.

Dispute Resolution Officer