



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF,

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, a Monetary Order for unpaid rent, compensation for damage or loss under the Act, regulations or tenancy agreement, for damage to the unit, site or property, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on October 26, 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. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to the unpaid rent and if so how much?
4. Is there a loss or damage and is the Landlord entitled to compensation for it?
5. Is the Landlord entitled to retain all or part of the Tenant's security deposit?

Background and Evidence

This tenancy started on April 1, 2010 as a fixed term tenancy with an expiry date of March 31, 2011 and then renewed on a month to month basis. Rent is \$1,023.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$500.00 in advance of April, 2011.

The Landlord said that the Tenant did not pay \$1,023.00 of rent for October, 2011, when it was due and as a result, on October 6, 2011, she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 6, 2011 on the door of the Tenants' rental unit. The Landlord said the Tenants have not paid the unpaid rent and they may have moved out of the rental unit, but she is not sure. The Landlord requested an Order of Possession for as soon as possible. The Landlord continued to say she is also claiming a \$25.00 NSF fee for a cheque that was returned for October, 2011, from the Tenants' bank and for 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 five days after it was mailed by registered mail, or on October 11, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 16, 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 October, 2011 in the amount of \$1,023.00. I further find that the Landlord is entitled to recover the NSF charge from the bank in the amount of \$25.00.

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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,023.00	
	NSF fee	\$ 25.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,098.00
Less:	Security Deposit	\$ 500.00	
	Subtotal:		\$ 500.00
	Balance Owing		\$ 598.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$598.00 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*.

Dated: November 15, 2011.

Dispute Resolution Officer