



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on February 20, 2012. 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.

During the course of the Hearing the Landlord requested to amend the application as they had not included their request to retain the Tenants security deposit as partial payment of the unpaid rent. I accept the Landlords amendment and include the request of the Landlord to retain the Tenants security deposit as part of this application.

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. Are the Landlords entitled to compensation for unpaid rent and if so how much?
4. Are the Landlords entitled to retain the Tenants security deposit?

Background and Evidence

This tenancy started on December 1, 2011 as a fixed term tenancy with an expiry date of September 30, 2012. Rent is \$830.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$415.00 in November, 2011.

The Landlord said that the Tenant did not pay \$830.00 of rent and \$80.00 of utilities for January, 2012 when it was due and as a result, on January 26, 2012 the Landlords posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 26, 2012, on the door of the Tenants' rental unit. The Landlord said the Tenant has unpaid rent for February, 2012 of \$830.00 and unpaid rent for March, 2012 of \$830.00. In addition the Landlord said they are claiming three late rent payment fees of \$30.00 each

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for January, February and March as well as unpaid utilities in the amount of \$80.00 per month for January, February and March, 2012.

The Landlord also requested the balance of the rent for the tenancy to September, 2012 in the amount of \$5,810.00, mailing and shipping costs of \$20.00, rekeying the doors of \$150.00 and the costs to hire a Bailiff to enforce the orders of \$200.00. The Landlord said their total claim is \$8,110.00.

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

The Landlord also requested to recover the \$100.00 filing fee for this proceeding.

The Landlord also said they are requesting compensation for loss rent for April, 2012 of \$830.00 as she is concerned that they will not rent the property out by April 1, 2012.

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 Tenants are deemed to have received the Notice to End Tenancy three days after it was posted on the Tenants' door of the rental unit, or on January 29, 2012. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than February 3, 2012.

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(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

I also find that the Landlord is entitled to recover unpaid rent for January, 2012 in the amount of \$830.00, February, 2012 in the amount of \$830.00 and the March, 2012, in the amount of \$830.00. As well I find the Landlord has established ground to claim \$80.00 per month for utilities for three months in the amount of \$240.00. I further find that the Landlord is not entitled to recover the potential loss of rental income for April as

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Section 7(2) says landlords have an obligation to mitigate their losses or damages by re-renting the rental unit as soon as possible. I find that the Landlord has time to rent the unit for April, 2012 in order to mitigate a potential rental loss.

In addition the Landlord has requested the balance of the fixed term tenancy agreement in the amount of \$5,810.00. Again under section 7(2) a landlord must do whatever is reasonable to mitigate or minimize the damage or loss. In this situation the Landlords said they will be renting the unit again as soon as possible therefore the potential loss of rent will be minimized or eliminated. As there is no loss of rent proven from the balance of the fixed term tenancy agreement, I dismiss with leave to reapply the Landlords claim for \$5,810.00 for the loss of rent under the tenancy from April, 2012 to September, 2012.

The Landlord has also claimed \$20.00 for postage as there is a clause in the tenancy agreement that says these costs are the responsibility of the Tenants if they are evicted. I accept the clause in the tenancy agreement and as the Landlord has included receipts for the cost I award the \$20.00 claim to the Landlords.

With respect to rekeying the unit, Policy Guideline 7 says a landlord is responsible for re-keying or changing the locks on a rental unit. Consequently I dismiss without leave to reapply the Landlords' claim of \$150.00 for changing the locks when the Tenants move out of the rental unit.

Further the Landlords have requested \$200.00 to hire a Bailiff to enforce the orders if they are successful, I find the Landlords have not proven a loss actually exists because this event has not happened; therefore I dismiss Landlords claim of \$200.00 with leave to reapply.

As the Landlord has been successful in this matter, they are also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,490.00	
	Unpaid Utilities	\$ 240.00	
	Late payment fees(3)	\$ 75.00	
	Mailing costs	\$ 20.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$2,925.00
Less:	Security Deposit	\$415.00	
	Subtotal:		\$ 415.00
	Balance Owing		\$ 2,510.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,510.00 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*.

Dispute Resolution Officer