



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 Landlords for an Order of Possession, a Monetary Order for unpaid rent and to recover the filing fee for this application.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail February 24, 2012. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

At the start of the conference call the Landlords said when they completed the application they forgot to request to keep the Tenant's security deposit for unpaid rent. The Landlords said they are now asking to include the Tenant's security deposit as part of their application. I accept the Landlords' request to amend the application to include the Tenant's security deposit as partial payment for unpaid rent.

Issues(s) to be Decided

1. Are the Landlords entitled 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 Tenant's security deposit?

Background and Evidence

This tenancy started on September 1, 2011 as a fixed term tenancy with an expiry date of August 31, 2012. Rent is \$600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$300.00 on August 25, 2011. The Landlords said the Tenant is living in the rental unit and the Landlords requested an Order of Possession for as soon as possible if they are successful with their application.

The Landlords said that the Tenant did not pay \$400.00 of rent for January, 2012 and \$600.00 of rent for February, 2012 when it was due and as a result, on February 2, 2012 the Landlords posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities

dated February 2, 2012 on to the door of the Tenant's rental unit. The Landlord continued to say that the Tenant also has unpaid rent for March 2012 in the amount of \$300.00.

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 three days after the Notice was posted on the Tenant's door, or on February 5, 2012. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than February 10, 2012.

I find that the Tenant has not paid the overdue rent and has 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 Landlords are entitled to recover unpaid rent for January, 2012 in the amount of \$400.00, unpaid rent for February, 2012 in the amount of \$600.00 and unpaid rent for March, 2012 in the amount of \$300.00.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant 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 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:	\$ 1,300.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,350.00
Less:	Security Deposit	\$ 300.00	
	Subtotal:		\$ 300.00
	Balance Owing		\$ 1,050.00



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Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,050.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: 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