

DECISION

Dispute Codes OPR, MNR, MNSD, FF

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 and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said he served the Tenants on February 19, 2012 by registered mail with the Application and Notice of Hearing (the "hearing package"). Section 90 of the Act says that a document delivered by mail is deemed to be received 5 days later. The Landlord said he conducted a Canada Post online search and found that the Tenants received a Notification card on February 22, 2012 but only picked up the hearing package ½ hour prior to the hearing (on March 6, 2012). The Landlord also said the Tenants were aware of these proceedings in any event because he left a copy of the hearing package posted to the rental unit door on February 19, 2012 and advised one of the Tenants on or about February 22, 2012 that he was proceeding with the dispute resolution hearing. 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.

Issue(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 keep the Tenants' security deposit?

Background and Evidence

This month-to-month tenancy started on November 1, 2011. Rent is \$675.00 per month payable in advance on the last day of the preceding month. The Tenants paid a security deposit of \$337.50 at the beginning of the tenancy.

The Landlord said the Tenants did not pay rent for January 2012 when it was due and as a result on January 17, 2012, the Landlord served the Tenants by registered mail with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 17, 2012. The Landlord said the Tenants received this Notice on January 20, 2012. The Landlord said the Tenants deposited \$600.00 to his bank account on January 22, 2012. The Landlord said he then contacted the Tenants to confirm that they were the ones who had made the deposit and advised them at that time that he still intended to enforce the 10 Day Notice. The Landlord said the Tenants have made no further payments and now have rent arrears for February and March 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 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 on January 20, 2012 the Tenants received the 10 Day Notice to End Tenancy dated January 17, 2012. Consequently, the Tenants would have had to pay in full the amount of the arrears stated on the Notice or (if the amount was not owed) apply to dispute that amount within 5 days or no later than January 25, 2012. I find that the Tenants have not paid the overdue rent in full 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 2 days after service of it on the Tenants.

I also find that the Landlord is entitled to recover rent arrears for January 2012 in the amount of \$75.00, for February 2012 in the amount of \$675.00, for the period, March 1 – 6, 2012, in the pro-rated amount of \$130.65 and a loss of rental income for the period, March 7 – 31, 2012 in the pro-rated amount of \$544.35 as well as 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 of \$337.50 in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing as follows:

January 2012 rent arrears:	\$75.00
February 2012 rent arrears:	\$675.00
March 1-6, 2012 rent arrears:	\$130.65
March 7-31, 2012 loss of rent:	\$544.35
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,475.00
Less: Security Deposit:	<u>(\$337.50)</u>
Balance Owing:	\$1,137.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$1,137.50** 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: March 06, 2012.

Residential Tenancy Branch