



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

The Landlord's agent said he served the Tenants on April 5, 2012 with the Application and Notice of Hearing (the "hearing packages") by registered mail to the rental unit address. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing packages 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 compensation for a loss of rental income?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on June 15, 2012 and expires on June 30, 2012. Rent is \$1,019.00 per month plus \$20.00 for parking which is payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$399.00 at the beginning of the tenancy.

The Landlord's agent said the Tenants' rent cheque for February 2012 was returned for non-sufficient funds and they did not pay rent for March 2012 when it was due. As a result, on March 8, 2012 the Landlord's agent served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 8, 2012 by posting it to the rental unit door. The Landlord's agent said the Tenants have not paid the arrears and have not paid rent for April 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 March 8, 2012 the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 8, 2012 when it was posted to the rental unit door. Under s. 90 of the Act, the Tenants were deemed to have received the Notice three days later or on March 11, 2012. Consequently, the Tenants would have had to pay the rent arrears alleged on the Notice or apply to dispute that amount no later than March 16, 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(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 February 2012 in the amount of 1,039.00 (which includes parking), for March in the amount of \$1,019.00 and for April 2012 in the amount of \$1,019.00. I further find that the Landlord is entitled to recover a late payment fee of \$25.00 for each of February, March and April 2012 pursuant to a term of the Parties' tenancy agreement to that effect. As the Landlord is required to take reasonable steps to re-rent the rental unit as soon as possible, I find that the Landlord's claim for a loss of rental income for May 2012 is premature and the Landlord is granted leave to reapply for that relief.

The Landlord also sought to recover a rental incentive of \$200.00. A term of the Parties' tenancy agreement provides that if a tenant is entitled to a rental incentive, it can be terminated under specified circumstances. The Landlord's agent said the Tenants received a \$200.00 rental incentive for one month and he claimed that under the terms of the Agreement they were required to repay it to the Landlord. However the tenancy agreement does not state that the rental incentive must be repaid by the Tenant if it is terminated and therefore I find that there are no grounds to award the Landlord this amount and that part of its claim is dismissed without leave to reapply.

I find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of \$399.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$2,803.00.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$2,803.00** 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: April 24, 2012.

Residential Tenancy Branch