



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MND, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damage to the unit site or property 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 personal delivery on April 16, 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 with all parties in attendance.

Issues(s) to be Decided

1. Do the Landlords 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. Is there damage to the unit, site or property and if so how much?
5. Are the Landlords entitled to compensation for any damage and if so how much?

Background and Evidence

This tenancy started on January 15, 2011 as a month to month tenancy. Rent is \$1,050.00 per month payable in advance of the 1st day of each month. The Tenant said they paid a security deposit of \$500.00 on January 15, 2011. The Landlord said there was no security deposit paid.

The Landlord said that the Tenant did not pay \$120.00 of rent for April, 2012 and the Tenant has unpaid rent of \$1,050.00 for May, 2012. As a result the landlord said they posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated April 1, 2012 and a 1 month Notice to End Tenancy for Cause dated April 1, 2012 on the door of the Tenant’s rental unit.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an order of Possession if their application is successful.

As well the Landlord said they are seeking monetary compensation for damage to the rental unit. The Landlord said the monetary claim they are making is an estimate of the damages as the repairs have not been done to date. The Landlord is claiming \$2,260.00 in damage to the unit.

The Tenant said that they have unpaid rent for April of \$110.00 and for May, 2012 in the amount of \$1,050.00. The Tenant said they are unable to pay the rent at the present time. The Tenant continued to say that there was no move in condition inspection completed and signed by the Landlord and because the rental unit was in very poor condition when they moved in he cannot understand the Landlord making any claims for damages

There were a number of other issues brought up by both sides, but these issues were not directly related to the application being dealt with at this hearing so both parties were told they could contact an Information Officer with the Residential Tenancy Branch if they wanted to make an application to deal with these other issues.

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 3 days after it was posted, or on April 3, 2012. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than April 8, 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 Landlord is entitled to recover unpaid rent for April, 2012, in the amount of \$120.00 and unpaid rent for May, 2012 in the amount of \$1,050.00.

With regards to the Landlords' claim for damage to the unit of \$2,260.00, an applicant must show a loss actually happened and that loss must be verified by invoices or receipts to show that the repairs have been completed. As the Landlord submitted an estimate of the damage and the Landlord said the repairs have not been completed, I

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find the Landlord has not established grounds to prove their claim for damage to the rental unit. I dismiss the Landlords' damage claim of \$2,260.00 with leave to reapply.

As the Landlord has been partially successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,170.00
Recover filing fee	\$ 50.00
Subtotal:	\$1,220.00
Balance Owing	\$1,220.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,220.00 have been issued to the Landlords. 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