



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, compensation for damage to the unit site or property, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Landlord did not check off the application boxes for unpaid rent and to retain the Tenants' security deposit, but the Landlord wrote these claims in the Details of Dispute area of the application. I accept the Landlord's written explanation of the application for unpaid rent and to retain the Tenants' security deposit.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on April 25, 2012. 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.

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. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on August 1, 2011 as a month to month tenancy. Rent is \$740.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$370.00 on August 1, 2011.

The Landlord said that the Tenants did not pay \$740.00 of rent for April, 2012 when it was due and as a result, on April 14, 2012 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated April 14, 2012 to the Tenants. The Landlord said the Tenants have unpaid rent for May, 2012 in the amount of \$740.00 as well.

The Landlord further indicated that the Tenants are living at the rental unit and the Landlord does not know what the Tenants' plans are.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Landlord also said that the Tenants have paid \$700.00 towards the unpaid rent on May 10, 2012. The Landlord said he issued a receipt that stated the payment was for "Use and Occupancy" of the rental unit.

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 on the day it was served in person, or on April 14, 2012. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than April 19, 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 48 hours after service of it on the Tenants.

I also find that the Landlord is entitled to recover the unpaid rent for April, 2012 in the amount of \$40.00 and the unpaid May, 2012 rent, in the amount of \$740.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants 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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:



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	Rent arrears:	\$ 780.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$ 830.00
Less:	Security Deposit	\$370.00	
	Subtotal:		\$ 370.00
	Balance Owing		\$ 460.00

Conclusion

An Order of Possession effective 1:00 p.m. on May 31, 2012 and a Monetary Order in the amount of \$460.00 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*.

Dispute Resolution Officer