



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 as well as 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 she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail to the rental unit address on April 18, 2012. 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 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 fixed term tenancy started on March 16, 2012 and expires on March 31, 2013. Rent is \$860.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$430.00 at the beginning of the tenancy.

The Landlord's agent said the Tenants did not pay rent for April 2012 when it was due and as a result, on April 2, 2012 the Landlord's agent served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2012 by posting it to the rental unit door. The Landlord's agent said rent for April 2012 has not been paid nor has rent for May 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 the Tenants were served on April 2, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door. Under s. 90 of the Act, the Tenants are deemed to have received this Notice 3 days later or on April 5, 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 April 10, 2012. In the absence of any evidence from the Tenants to the contrary, 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.

The Parties' tenancy agreement contains a hand written notation that the Tenants were entitled to "1/2 month off for April 2012." The Landlord's agent admitted that the Tenants were to receive a credit or rental incentive of \$430.00 which was to be applied to rent for April 2012. The Landlord's agent argued however, that this was only supposed to apply as long as the Tenants fulfilled their obligations under the tenancy agreement. Although the Tenants' failure to pay rent for April 2012 was a breach of a material term of the tenancy agreement that entitles the Landlord to end the tenancy, it does not entitle the Landlord to change the terms of the agreement as to what was due for rent. The agreement does not indicate that rent for April will be \$430.00 only if certain conditions are met. Consequently, I find that the Landlord is entitled to unpaid rent of \$430.00 for April 2012, unpaid rent for May 1 – 8, 2012 in the pro-rated amount of \$221.93 and a loss of rental income for May 9 – 15, 2012 in the pro-rated amount of \$194.19. The Landlord may re-apply for any further loss of rental income it incurs.

I also 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. In summary, I find that the Landlord is entitled to a monetary award of \$896.12. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of \$430.00 in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing of \$466.12.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$466.12** 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: May 08, 2012.

Residential Tenancy Branch