



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O

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, to keep the Tenant's security deposit in partial payment of those amounts and for other considerations.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on May 14, 2012. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's 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?
5. What other considerations are there?

Background and Evidence

This tenancy started on December 15, 2010 as a renewable 2 month fixed term tenancy. The present tenancy agreement expires on May 31, 2012. Rent is \$895.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$447.50 in December, 2010.

The Landlord said that the Tenant did not pay \$45.00 of rent for March, 2012 and \$895.00 of rent for April, 2012, when it was due and as a result, on April 17, 2012, she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated April 11, 2012 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for May, 2012 of \$895.00 as well.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession for as soon as possible if their application is successful.

The Landlord also sought to recover four late payment fee of \$25.00 each, totally \$100.00 and 3 NSF fees of \$25.00 each, totally \$75.00, both of which are written into the Tenancy agreement. The Landlord also requested to recover the \$50.00 filing fee for this proceeding.

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 20, 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 30, 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 March and April, 2012, in the amount of \$940.00. I further find that the Landlord is entitled to recover lost rental income for May 2012, in the amount of \$895.00. As well, I find that the Landlord is entitled to recover the late charge of \$100.00 and the NSF charges of \$75.00 as both fees are written into the Tenancy Agreement and the Landlord submitted the tenancy ledger which shows the financial charges being added to the account.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant 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 Tenant's 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:	\$940.00	
	Loss of Rental Income:	\$895.00	
	Late payment fees(4)	\$ 100.00	
	NSF fees(3)	\$ 75.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,060.00
Less:	Security Deposit	\$447.50	
	Subtotal:		\$ 447.50
	Balance Owning		\$1,612.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,612.50 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