



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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, to recover late payment fees and 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 on October 24, 2012 with the Application and Notice of Hearing (the "hearing packages") by registered mail to the rental unit address. The Landlord's agent said the hearing packages were returned to her unclaimed although the Tenants continue to reside in the rental unit. Section 90(a) of the Act says a document delivered by mail is deemed to be received five days later (even if the recipient refuses to pick up the mail). Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' 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 keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on July 15, 2012 and expires on July 31, 2013. Rent is \$975.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$487.50 at the beginning of the tenancy.

The Landlord's agent said the Tenants did not pay rent in full for October 2012 and as a result, on October 10, 2012 she served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the rental unit door. The Landlord's agent said that the Tenants did not make any payments after they were served with the 10 Day Notice and that they currently have arrears of \$425.00 for October 2012 and \$975.00 for November 2012. The Landlord also sought to recover two late payment fees of \$25.00 each pursuant to a term in the Parties' tenancy agreement to that effect.

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.

In the absence of any evidence from the Tenants to the contrary, I find that they were served on October 10, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when it was posted to the rental unit door. Under s. 90 of the Act, the Tenants are deemed to have received this Notice three days later or on October 13, 2012. Consequently, the Tenants would have had to pay in full the amount of rent arrears alleged on the 10 Day Notice or apply to dispute that amount no later than October 18, 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 in the amount of \$425.00 for October 2012 and of \$975.00 for November 2012 as well as two late payment fees of \$25.00 each (for October and November 2012) and the \$50.00 filing fee for this proceeding.

The Landlord also applied to recover an NSF fee of \$25.00 pursuant to a term in the Parties' tenancy agreement however, s. 7 of the Regulations to the Act says that a Landlord may only recover bank charges it actually incurs. Consequently, the Landlord is only entitled to recover NSF fees upon providing sufficient evidence that the amount claimed was charged by its financial institution. As the Landlord provided no evidence that it incurred NSF fees, this part of its application is dismissed without leave to reapply.

I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit of \$487.50 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing as follows:

Rent arrears:	\$1,400.00
Late fees:	\$50.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,500.00
Less: Security Deposit:	<u>(\$487.50)</u>
Balance Owing:	\$1,012.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$1,012.50** 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: November 28, 2012.

Residential Tenancy Branch