



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

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, for compensation for loss or damage under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on August 16, 2010. 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 there a loss or damage to the Landlord and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on April 4, 2012 as a month to month tenancy. Rent is \$2,000.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$1,000.00 and a pet deposit of \$500.00 on April 4, 2012.

The Landlord said that the Tenants did not pay \$2,000.00 of rent for February, 2013, when it was due and as a result, on February 5, 2013 the Landlord posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 5, 2013 on the door of the Tenants' rental unit. The Landlord continued to say the Tenants paid \$700.00 on February 18, 2013 for the February rent which left \$1,300.00 in unpaid rent for February, 2013. The Landlord said the Tenants have unpaid rent for March and April, 2013 as well in the amount of \$2,000.00 for each month.

The Landlord further indicated that the Tenants are living at the rental unit and the Landlord requested an Order of Possession for as soon as possible.

The Landlord also sought 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 Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or on February 8, 2013. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than February 13, 2013.

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 unpaid rent for February, 2013, in the amount of \$1,300.00. I further find that the Landlord is entitled to recover unpaid rent for March, 2013 in the amount of \$2,000.00 and a loss of rental income for April, 2013 in the amount of \$2,000.00.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit and pet deposit as partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$3,300.00	
	Loss of Rental Income:	\$2,000.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$5,350.00
Less:	Security Deposit	\$1,000.00	
	Pet Deposit	\$ 500.00	
	Subtotal:		\$1,500.00
	Balance Owing		\$3,850.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$3,850.00 have been issued to the Landlords. 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: April 10, 2013

Residential Tenancy Branch

