



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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, regulations or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he 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 the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on May 1, 2013 as a 6 month fixed term tenancy with an expiry date of October 31, 2013. Rent is \$1,150.00 per month payable in advance of the 1st day of each month. The Tenants were to pay a security deposit of \$550.00, but the Tenants only paid a security deposit of \$300.00 in May, 2013.

The Landlord said that the Tenants did not pay \$270 of rent for June, 2013 and \$1,150.00 of rent for July, 2013 when it was due and as a result, on July 2, 2013 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2013 on the door of the Tenants' rental unit. The Landlord submitted a Proof of Service document that has a witness signature to support the service of the Notice. The Landlord also said the Tenants have unpaid rent for August, 2013 in the amount of \$1,150.00.

The Landlord further indicated that the Tenants are living at the rental unit and the Landlord said he would like to end the tenancy as soon as possible.

The Landlord also sought to recover a \$200.00 strata fine for the Tenants smoking in the hall ways of the building, but the Landlord said he did not submit a paid receipt to verify the strata fine. 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 July 5, 2013. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 10, 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 June, 2013, in the amount of \$270.00 and unpaid rent for July, 2013 in the amount of \$1,150.00. I further find that the Landlord is entitled to recover loss of rental income for August, 2013 in the amount of \$1,150.00 as the probability of the Landlord renting the unit prior to September, 2013 is unlikely.

With regard to the Landlord's claim for compensation for a strata fine of \$200.00 it is the Landlord's responsibility to verify any monetary claim for damage or loss with a paid receipt. As the Landlord did not submit a copy of the paid receipt for the strata fine of \$200.00 I dismiss the claim without leave to reapply.

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:

	Rent arrears:	\$1,420.00	
	Loss of Rental Income:	\$1,150.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,620.00
Less:	Security Deposit	\$300.00	
	Subtotal:		\$ 300.00
	Balance Owing		\$2,320.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,320.00 have been issued to the Landlord. 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*.

Dated: August 12, 2013

Residential Tenancy Branch

