



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for compensation for loss or damage under the Act, regulations or tenancy agreement and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal service to an adult in the rental unit on August 3, 2013. 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 with all parties present.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent and utility arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and utilities 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 compensation for the loss or damage and if so how much?
6. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on December 1, 2012 as a month to month tenancy. Rent is \$1,000.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$500.00 when they moved into the rental unit.

The Landlord said that the Tenants did not pay \$500.00 of rent for July, 2013 when it was due and as a result, on July 13, 2013 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 13, 2013 to the Tenants. The Landlord said the Tenants now have unpaid rent for July, 2013 of \$200.00, for August of \$500.00 and for September of \$500.00. In addition the Landlord said the Tenants have unpaid utilities in the amount of \$729.15.

The Landlord further indicated that the Tenants are living at the rental unit and the Landlord wants to end the tenancy as soon as possible. The Landlord's agent requested an Order of Possession for as soon as possible.

The Landlord also sought to retain the Tenants' security deposit as partial payment of the unpaid rent.

The Tenants said that there is unpaid rent for July, August and September, 2013, because one of the Tenants was having difficulties with Social Services and so she does not have any money at the present time. The other Tenant said she has paid her part of the rent. As well the Tenants disputed the hydro bill because they said there is some confusion if each rental unit has its own meter and bill or if all the rental units are combined on one hydro bill. The Landlord said that each rental unit has its own meter and bill and that is supported by the Tenants' address on the hydro bill that he submitted with his evidence package.

In addition the Tenants said they did not sign the tenancy agreement and that the Tenant (R.D.'s) name is spelled wrong. The Landlord's agent said he was not there at the signing of the tenancy agreement so he did not witness who signed the agreement.

The Tenants did not submit any evidence to support their testimony as one of the Tenants said they did not have the money to do it.

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 the same day it is personally served to them, or on July 14, 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 19, 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 July 2013 in the amount of \$200.00, for August, 2013 in the amount of \$500.00 and for September, 2013 in the amount of \$500.00.

With respect to the utility arrears I accept the Landlord's testimony that there is one meter and bill per unit as indicted on the hydro bill in the evidence package. Consequently I award the Landlord the unpaid utility charges of \$729.15.

As the Landlord has been successful in this matter, I order the Landlord pursuant to s. 38(4) 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:	\$1,200.00	
	Utility arrears:	\$ 729.15	
	Sub total		\$1,929.15
Less:	Security Deposit	\$ 500.00	
	Subtotal:		\$ 500.00
	Balance Owing		\$1,429.15

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$1,429.15 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: September 09, 2013

Residential Tenancy Branch

