



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 Tenants' 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 personal delivery on September 6, 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 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 November 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 Tenant paid a security deposit of \$500.00 on October 15, 2012.

The Landlord said that the Tenants did not pay \$1,000.00 of rent for July, 2013 and \$1,000.00 of unpaid rent for August, 2013, when it was due and as a result, on August 5, 2013 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 5, 2013 on the door of the Tenants' rental unit. The Landlord said the Tenants also have unpaid rent for September and October, 2013 for \$1,000.00 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 and to retain the Tenants' security deposit as partial payment of the unpaid rent.

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 Tenants fail 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 August 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 August 12, 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 \$1,000.00, for August, 2013 in the amount of \$1,000.00, for September, 2013 in the amount of \$1,000.00 and for October, 2013 in the amount of \$1,000.00.

As the Landlord has been successful in this matter, he is 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 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:	\$4,000.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$4,050.00
Less:	Security Deposit	\$ 500.00	
	Subtotal:		\$ 500.00
	Balance Owing		\$3,550.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$3,550.00 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: October 15, 2013

Residential Tenancy Branch

