



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 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 registered mail on November 8, 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 both parties in attendance.

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 September 1, 2013 as a 1 year fixed term tenancy with an expiry date of August 31, 2014. Rent is \$1,775.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$887.00 in August, 2013.

The Landlord said that the Tenant did not pay \$1,775.00 of rent for October, 2013, when it was due and as a result, on October 27, 2013 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 27, 2013 on the door of the Tenants' rental unit. The Landlord said the Tenants have unpaid rent for November, 2013 of \$1,775.00 as well.

The Tenant said they have moved out of the unit as of November 23, 2013. The Landlord said he was not aware the Tenants moved out of the unit therefore the

Landlord requested an Order of Possession for as soon as possible because this tenancy has a fixed term tenancy agreement. The Landlord also requested loss rental income for December, 2013 as he will not be able to rent the unit for the month of December, 2013.

The Landlord also requested to recover the \$50.00 filing fee for this proceeding.

The Tenant said she did not understand that she could send in evidence prior to the hearing, but she did understand that she could give her account of the tenancy by testimony in the Hearing. The Tenant said they are having difficult financial times and as a result were unable to pay the rent for October and November, 2013. This has been very difficult on her family, but that is their situation. The Tenant said she understands this is a fixed term tenancy which makes them responsible for the rent until the expiry date of the tenancy agreement which is August 31, 2014. The Tenant said they did email the Landlord that they were moving out.

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 October 30, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than November 5, 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 October, 2013, in the amount of \$1,775.00 and for unpaid rent for November, 2013 in the amount of \$1,775.00. I further find that the Landlord is entitled to recover loss of rental income for December, 2013 as the tenancy is a fixed term agreement which makes the Tenants responsible for the rent for December, 2013 in the amount of \$1,775.00. Further, the Landlord has an obligation to mitigate his damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible; therefore I limit the Landlord's claim for lost rental income to one month which in this case will be of December, 2013.

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:	\$3,350.00	
	Loss of Rental Income:	\$1,775.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$5,375.00
Less:	Security Deposit	\$887.00	
	Subtotal:		\$ 887.00
	Balance Owing		\$4,488.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$4,488.00 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: November 27, 2013

Residential Tenancy Branch

