



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP
and [tenant name suppressed to protect privacy]

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 May 6, 2014. 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

The Landlord was not aware when the tenancy started, but he knew it was before December, 2012 as that is when he started working at the rental complex. Rent is \$688.50 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$315.00 in advance of the tenancy.

The Landlord said that the Tenant did not pay \$315.00 of rent for April, 2014 when it was due and as a result, on April 30, 2014 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated April 30, 2014 to the Tenants. The Landlord said the Tenants had additional unpaid rent for May and June, 2014, but the Tenants paid \$900.00 on June 9, 2014. The Landlord continued to say the Tenants now have \$802.50 of unpaid rent.

The Landlord said he is requesting to end the tenancy as soon as possible and for a monetary order for unpaid rent of \$802.50 and the \$50.00 filing fee.

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 the Tenancy for unpaid rent or utilities on the same day it was personally delivered to the Tenants, or on April 30, 2014. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than May 5, 2014.

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 May and June, 2014, in the amount of \$802.50.

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 payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$802.50	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$857.50
Less:	Security Deposit	\$315.00	
	Subtotal:		\$315.00
	Balance Owing		\$542.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$542.50 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: June 23, 2014

Residential Tenancy Branch

