



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
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 Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on January 16, 2015. 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 October 16, 2012 as a 1 year fixed term tenancy with an expiry date of October 31, 2013 and then continued on a month to month basis. Rent is \$1,216.18 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$575.00 at the start of the tenancy.

The Landlord said that the Tenants did not pay \$1,216.18 of rent for January, 2015 when it was due and as a result, on January 2, 2015 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 2, 2015 on the door of the Tenants' rental unit. The Landlord said the Tenants have paid the January, 2015 rent and he issued a receipt for "Use and Occupancy Only" as the Landlord did not want to re-instate the tenancy. Further the Landlord said the Tenants have unpaid rent of \$907.36 for February, 2015 and the Landlord requested a monetary order for that amount and for an Order of Possession effective February 28, 2015 if his application is successful.

The Landlord said he wants to end the tenancy as the Tenants have been late with the rent payment on many occasions.

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 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 Tenancy 3 days after it was posted, or on January 5, 2015. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 10, 2015.

I find that the Tenants did not pay the overdue rent within the time limits 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 February 28, 2015 as that is the date the Landlord has requested to end the tenancy.

I also find that the Landlord is entitled to recover unpaid rent for February 2015, in the amount of \$907.36.

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:	\$907.36	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$957.36
Less:	Security Deposit	\$575.000	
	Subtotal:		\$575.00
	Balance Owing		\$382.36

Conclusion

An Order of Possession effective February 28, 2015 at 1:00 p.m. and a Monetary Order in the amount of \$382.36 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: February 04, 2015

Residential Tenancy Branch

