



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPR, MNR, MNSD, FF
TENANT: CNR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on January 15, 2015 in accordance with section 89 of the Act.

The Tenants did not attend the hearing and consequently as they did not support their application with testimony I dismiss the Tenants application without leave to reapply.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent 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 retain the Tenants' security deposit?

Background and Evidence

This tenancy started on December 20, 2014 as a fixed term tenancy with an expiry date of December 1, 2015. Rent is \$1,500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$500.00 on December 19, 2014. It should be noted the security deposit stated in the tenancy agreement is \$750.00 and the pet deposit is \$750.00. The pet deposit was not paid.

The Landlord said that the Tenants did not pay \$1,500.00 of rent for January, 2015 when it was due and as a result, on January 8, 2015 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 8, 2015 to the Tenants. The Landlord said the Tenants have unpaid rent for February, 2015 in the amount of \$1,500.00 as well.

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.

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. The Tenants did apply to dispute the Notice to End Tenancy, but did not appear at the Hearing therefore their application has been dismissed.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was originally served, or on January 8, 2015. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 13, 2015. The Tenants application was received on January 15, 2015 which is 2 days after the time limit to dispute the Notice. The Tenants' application did not meet the time requirements of the Act.

I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution within the time limits under the Act. 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 January, 2015, in the amount of \$1,500.00. I further find that the Landlord is entitled to recover a loss of rental income for February, 2015 in the amount of \$1,500.00.

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:	\$1,500.00	
	Loss of Rental Income:	\$1,500.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$3,050.00
Less:	Security Deposit	\$ 500.00	
	Subtotal:		\$ 500.00
	Balance Owing		\$2,550.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,550.00 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.

The Tenants' application is dismissed without leave to reapply.

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 03, 2015

Residential Tenancy Branch

