



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MELECTRA ENTERPRISES LTD. & MIKE PAYNE
and [tenant name suppressed to protect privacy]

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 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 registered mail on February 17, 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. Are there other damages or losses and if so how much?
5. Is the Landlord entitled to compensation for other damages and losses and if so how much?
6. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on September 1, 2014 as a 1 year fixed term tenancy with an expiry date of August 31, 2015. Rent is \$1,590.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$795.00 on August 24, 2014 and a pet deposit of \$795.00 on September 2, 2014.

The Landlord said that the Tenant did not pay \$1,590.00 of rent for December, 2014 when it was due and as a result, on December 16, 2014 the Landlord posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 16, 2014 on the

door of the Tenants' rental unit. The Landlord said the Tenants have unpaid rent for January, February and March, 2015 in the amount of \$1,590.00 for each month. Further the Landlord requested lost rental income for April, 2015 in the amount of 1,590.00 as the unit is in poor condition and needs work to make it available to rent again. The Tenants smoked in the unit even though the tenancy agreement was a no smoking agreement which means the unit has to be cleaned and repainted. The Landlord said he is also expecting damage to the unit and the Landlord said he will make an additional application for any damage costs.

The Landlord said he is not sure if the Tenants have moved out but they have not returned the keys so the Landlord requested an Order of Possession for as soon as possible.

The Landlord also sought to recover an advertising fee of \$24.64 and an administration fee of \$397.50 as well as the filing fee of \$100.00.

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 December 19, 2014. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than December 22, 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 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.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a tenant may end a fixed term tenancy **not earlier** than the date specified in the tenancy or with the agreement of the Landlord.

The Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Landlord is entitled to recover unpaid rent for December, 2014, January, 2015, February, 2015 and March, 2015 in the amount of \$1,590.00 for each month. I further find that the Landlord is entitled to recover a loss of rental income for

April, 2015 in the amount of \$1,590.00 due to the Tenants breaching the fixed term tenancy agreement.

With regard to the advertising fee of \$24.64 and the administrative fee of \$397.50; these fees are liquidated damages and for the Landlord to be successful in claiming liquidated damages the fees must be pre-estimated and written into the tenancy agreement. Consequently as these fees were not pre-estimated and written into the tenancy agreement therefore I dismiss the advertising and administrative fee without leave to reapply.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$100.00 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 and pet deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$6,360.00	
	Loss of Rental Income:	\$1,590.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$8,050.00
Less:	Security Deposit	\$ 795.00	
	Pet Deposit	\$ 795.00	
	Subtotal:		\$1,590.00
	Balance Owing		\$6,460.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$6,460.00 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: March 17, 2015

Residential Tenancy Branch

