



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on March 19, 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.

At the start of hearing the Landlord said he did not check off the box on the application to retain the Tenants' security deposit and he requested the application be amended to include the security deposit for partial payment of the unpaid rent. I accept the Landlord's request for the amendment to include the Tenants' security deposit in the application.

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 April 1, 2014 as a month to month tenancy. Rent is \$810.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$405.00 during the first part of the tenancy.

The Landlord said that the Tenant did not pay \$1,765.00 of rent for January , February and March, 2015 when it was due and as a result, on March 2, 2015 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2015 to the Tenant. The Landlord said the Tenants have unpaid rent for April, 2015 in the amount of \$810.00 as well.

The Landlord further indicated that the Tenants may have moved out, but he is not sure. The Landlord requested an Order of Possession for as soon as possible so he can gain possession of the rental unit.

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 on the day it was personally delivered to the Tenant, or on March 2, 2015. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 7, 2015.

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 Tenant.

I also find that the Landlord is entitled to recover unpaid rent for January, February, March and April, 2015 in the amount of \$2,575.00.

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:	\$2,575.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,625.00
Less:	Security Deposit	\$405.00	
	Subtotal:		\$ 405.00
	Balance Owing		\$2,220.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,220.00 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: April 22, 2015

Residential Tenancy Branch

