



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter dealt with an application by the Landlord for An Order of Possession and a Monetary Order for unpaid rent

The Landlord said she served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on February 16, 2016. 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 with both parties in attendance.

It should be noted this hearing was rescheduled from a Direct Request Proceeding dated February 1, 2016 as the proof of service required by the Direct Request process was not done correctly.

Issues(s) to be Decided

1. Is the Landlord entitled 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?

Background and Evidence

This tenancy started on November 15, 2015 as a fixed term tenancy with an expiry date of November 30, 2016. Rent is \$1,150.00 per month payable in advance of the 1st day of each month. A security deposit of \$575.00 was paid in advance of the tenancy. The Tenant said a move in condition inspection report was completed.

The Landlord said that the Tenants did not pay \$25.00 late fee for each month of December, 2015 and January, 2016 as well as the rent of \$1,150.00 for January, 2016 when it was due and as a result, on January 7, 2016 the Landlord posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 7, 2016 on the Tenants’ door. The Landlord continued to say that the Tenant also has unpaid rent for March, 2016 and there is two late fees of \$25.00 each for February and March, 2016.

The Landlord said her total claim is for \$2,400.00 plus the filing fee of \$100.00.

Further the Landlord requested an Order of Possession for as soon as possible if her application is successful.

The Tenants agreed the March rent of \$1,150.00 is unpaid but the female Tenant said they dropped of two money orders for the other unpaid rent. The female Tenant said she did not know who cashed the money orders and she did not understand that she should send a copy of the money order into the hearing as evidence to prove that the unpaid rent is paid. The Tenants said this was their first tenancy dispute and they do not understand what they were to do for the hearing. The Tenants said they did not make an application to dispute the 10 Day Notice to End Tenancy for unpaid rent dated January 7, 2016.

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 Tenancy three days after the Notice was posted on the door, or on January 10, 2016. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 15, 2016.

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 January, 2016 of \$1,150.00, March, 2016 of \$1,150.00, the late fees for December, 2015 and January, February and March, 2016 in the amount of \$100.00 and the filing fee of \$100.00 totalling \$2,500.00.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,500.00 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 23, 2016

Residential Tenancy Branch