

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 this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on May 20, 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 the Tenants and Landlord present.

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?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on September 1, 2003 as a month to month tenancy. Rent is \$1,035.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$450.00 and a pet deposit of \$150.00 at the start of the tenancy.

The Landlord said that the Tenant did not pay \$435.00 of rent for May, 2016 and as a result, on May 20, 2016 she sent a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated May 20, 2016 by registered mail to the Tenants. The Landlord said the Tenants have unpaid rent for June, 2016 in the amount of \$1,035.00 and for July, 2016 in the amount of \$1,035.00.

The Landlord said she wants to end the tenancy and recover the unpaid rent.

The Landlord also said she has applied to recover the \$100.00 filing fee for this proceeding.

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The Tenants said they do not dispute the amount of rent owed but the Tenants said they believe they had a verbal agreement with the Landlord that they did not have to pay any rent until the house sold. As well the male Tenant said he tried to pay the May, 2016 rent on May 31, 2016, but the Landlord did not accept it.

The Landlord said she did say that the Tenants could keep the May, 2016 rent if they would moved out. As well the Landlord said she would forgive the June and July rent if the Tenants moved out but they did not move so she has made this application to end the tenancy and collect the unpaid rent.

The Tenants said they have had many verbal agreements with the Landlord and these agreements have worked so they do not understand why the Landlord is not holding to this agreement which was to forgive the rent until the house sold.

The Landlord said she was willing to forgive the rent if the Tenants moved out but they have not moved out.

Further the male Tenant said they offered to pay the rent on May 31, 2016 but the Landlord refused it.

The Landlord said the Notice to End Tenancy said the Tenants had to pay the rent by May 30, 2016 so the Tenants were late trying to pay the rent on May 31, 2016. The Landlord said she what to end the tenancy.

The female Tenant said she needs time to move.

The Landlord said she agrees to end the tenancy on July 31, 2016 and the Landlord requested and Order of Possession for July 31, 2016.

The Tenants said in closing that they feel this situation is unfair to them.

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 5 days after it was registered mailed, or on May 25, 2016. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than May 30, 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 of the Act that the Landlord is entitled to an Order of Possession to take effect 1:00p.m. on July 31, 2016.

I also find that the Landlord is entitled to recover unpaid rent for May, 2016, in the amount of \$435.00 and \$1,035.00 for each month of June and July, 2016.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenants 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:	\$2,505.00	
	Recover filing fee	<u>\$ 100.00</u>	
	Subtotal:		\$2,605.00
Less:	Security Deposit	\$ 450.00	
	Pet Deposit	<u>150.00</u>	
	Subtotal:		<u>\$ 600.00</u>
	Balance Owing		<u>\$2,105.00</u>

Conclusion

An Order of Possession effective July 31, 2016 and a Monetary Order in the amount of \$2,105.00 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: July 5, 2016.

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