



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security and pet deposits in partial payment of those amounts.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on May 3, 2017. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' 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 and utility arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and utilities and if so how much?
4. Is the Landlord entitled to keep the Tenants' security and pet deposits?

Background and Evidence

This tenancy started on July 1, 2015 as a month to month tenancy. Rent is \$1,400.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$700.00 and a pet deposit of \$700.00 on July 1, 2015.

The Landlord said that the Tenants did not pay \$2,900.00 of rent and arrears of rent and \$649.56 of unpaid utilities for April, 2017 when it was due and as a result, on April 12, 2017 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated April 12, 2017 to the male Tenant. The male Tenant signed the Proof of Service provided by the Landlord for service of the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. The Landlord said the Tenant has unpaid rent for May and

June, 2017 in the amount of \$2,800.00 as well. The Landlord submitted the utility bills to support his unpaid utility claims.

The Landlord continued to say the Tenant has made two payments in May, 2017, one of \$400.00 on May 9, 2017 and the other of \$3,000.00 on May 29, 2017. The Landlord said he is trying to work with the Tenant but he is still requesting an Order of Possession for as soon as possible and a monetary order for the unpaid rent and utilities. The Landlord said the balance of unpaid rent and utilities owing is \$6,349.56 less the two payments of \$3,400.00 leaving the amount of unpaid rent and utilities in the amount of \$2,949.56.

The Landlord also sought to recover the \$100.00 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, Tenants must pay the overdue rent or apply for dispute resolution. If the Tenants 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 the day it is personally delivered, or on April 12, 2017. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than April 17, 2017.

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 and utilities in the amount of \$2,949.56.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding.

As the Landlord indicated he is still trying to work with the Tenants and he is willing to continue the tenancy if the unpaid rent and utilities are paid therefore the Landlord said he would like to leave the security and pet deposits in place at this time.

The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$2,949.56
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Recover filing fee	\$ 100.00	
Balance owing:		\$3,049.56

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$3,049.56 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: June 07, 2017

Residential Tenancy Branch