



Dispute Resolution Services

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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, a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on April 6, 2018. The Landlord provided a postal receipt and tracking information in support of the service of documents. 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. Is the Landlord entitled to keep the Tenants’ security and pet deposits?

Background and Evidence

This tenancy started on December 15, 2017 as a 1 year fixed term tenancy with an expiry date of December 15, 2018. Rent is \$1,800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit in the amount of \$300.00 and a pet deposit of \$400.00 during the tenancy. It should be noted the tenancy agreement requires a security deposit in the amount of \$900.00. The Landlord said she did not receive the full security deposit from the Tenants.

The Landlord said that the Tenant did not pay the full January 2018 rent nor \$1,800.00 of rent for February 2018 when it was due and as a result, on February 22, 2018 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 22,

2018 in the mail slot of the Tenants' rental unit. The Landlord said the Tenants paid \$1000.00 on March 20, 2018 and \$2,000.00 on April 13, 2018, but there still is unpaid rent for March 2018 in the amount of \$1,300.00 and unpaid rent for April 2018 in the amount of \$1,800.00.

The Landlord further indicated that the Tenants are living at the rental unit and the Landlord requested to end the tenancy because of the unpaid rent.

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, 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 3 days after it was posted, or on February 25, 2018. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 2, 2018.

I find that the Tenant has not paid the overdue rent and has 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 March 2018 in the amount of \$1,300.00 and the unpaid rent for April 2018 in the amount of \$1,800.00.
875.00

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: | \$3,100.00 | |
| | Recover filing fee | \$ 100.00 | |
| | Subtotal: | | \$3,200.00 |
| Less: | Security Deposit | \$300.00 | |
| | Pet Deposit | \$400.00 | |
| | Subtotal: | | \$ 700.00 |
| | Balance Owing | | \$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: April 23, 2018

Residential Tenancy Branch