



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 as well as to recover the filing fee for this proceeding. The Landlords also applied to keep the Tenant's security deposit.

The Landlords said they served the Tenant in person on May 26, 2009 with a copy of the Application and Notice of Hearing. I find the Tenant was served as required under s. 89 of the Act and the hearing proceeded in his absence.

Issues(s) to be Decided

1. Are the Landlords entitled to end the tenancy?
2. Is there unpaid rent and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This month to month tenancy started on December 1, 2008. Rent is \$800.00 per month payable in advance on the first day of each month. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy. The Landlords said that the Tenant had rent arrears of \$325.00 from April 2009 and did not pay May 2009 rent when it was due. As a result, on May 2, 2009 the Landlords posted a 10 Day Notice to End Tenancy for Unpaid rent dated May 2, 2009 on the Tenant's door. The Landlords claim that the Tenant has not paid any amounts since they served him with the 10 Day Notice and has not paid rent for June, 2009.

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 either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, he is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to



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End Tenancy 3 days after it was posted, or on May 5, 2009. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount within 5 days, or **no later than May 10, 2009**.

I find that the Tenant has not paid the amount indicated on the Notice and has not applied for dispute resolution. Consequently, pursuant to section 46(5) of the Act, he is conclusively presumed to have accepted that the tenancy would end on the effective date of the Notice, or on May 15, 2009.

The Landlords requested and I find pursuant to s. 55(2)(b) of the Act that they are entitled to an Order of Possession to take effect immediately. I also find that the Landlords are entitled to recover rent arrears of \$325.00 for April 2009, \$800.00 for May 2009 and \$400.00 for June 1 – 15, 2009 for a total of \$1,525.00 as well as the \$50.00 filing fee for this proceeding. Pursuant to s. 38(4), 62(3) and 72 of the Act, I order the Landlords to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as follows:

Rent arrears:	\$1,525.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,575.00
Less: Security Deposit:	(\$400.00)
Accrued Interest:	<u>(\$0.51)</u>
Balance Owing:	\$1,174.49

Conclusion

An Order of Possession effective immediately and a monetary order in the amount of **\$1,174.49** have been issued to the Landlords. A copy of the Orders must be served on the Tenant; 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 04, 2009.

Dispute Resolution Officer