



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 he made a mistake when he completed the application. He said he did not check off that he wanted to retain the security deposit as partial payment of the unpaid rent. The Landlord requested that the application be amended to include the security deposit as partial payment of the unpaid rent. The request for amendment was granted.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal deliver November 24, 2010. 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 Tenant's 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 Tenant's security deposit?

Background and Evidence

This tenancy started on August 1, 2010 as a fixed term tenancy with an expiry date of March 31, 2010. Rent is \$1,185.00 per month and parking is \$50.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$590.00 on June 23, 2010.

The Landlord said that the Tenants did not pay \$1,235.00 of rent and parking for November, 2010 when it was due and as a result, on November 15, 2010 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated November 15, 2010, on the door of the Tenants' rental unit. The Landlord said the Tenants have unpaid rent and parking for December 2010 of \$1,235.00 as well.



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The Landlord further indicated that the Tenants are living at the rental unit and the Tenants have told the Landlord that they will be moving out, but the Landlord said he is not sure when they would be fully moved out.

The Landlord also sought to recover the \$50.00 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 November 18, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than November 23, 2010.

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 Tenant.

I also find that the Landlord is entitled to recover unpaid rent and parking for November, 2010, in the amount of \$1,235.00. I further find that the Landlord is entitled to recover a loss of rental income and parking for December, 2010 in the amount of \$1,235.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 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 deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:



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	Rent arrears: (\$1,185.00 X 2)	\$2,370.00
	Parking arrears (\$50.00 X 2)	\$ 100.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$2,520.00
Less:	Security Deposit	\$ 590.00
	Subtotal:	\$ 590.00
	Balance Owing	\$1,930.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$1,930.00 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*.
