



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord's agent said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on February 23, 2011. Based on the evidence of the Landlord's agent, I find that the Tenants was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord's agent in attendance.

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?

Background and Evidence

This tenancy started on January 1, 2011, as a 1 month to month tenancy with this Property Manager. There was a previous tenancy, but the terms of that tenancy were unknown to the participants of the hearing. Rent is \$1,155.00 per month payable in advance of the 1st day of each month. The Tenants paid \$200.00 each into a security deposit pool held by the tenants, but no deposit was paid to the Landlord or the Landlord's agent.

The Landlord said that the Tenants did not pay \$385.00 of rent for February, 2011 when it was due and as a result, on February 13, 2011 the Landlord's agent personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 13, 2011 to the Tenants. The Landlord said the Tenants have unpaid rent for March, 2011 of \$385.00.

The Landlord further indicated that two of the Tenants have moved out J.C. and A.S. and one of the Tenants D.M. is living at the rental unit and the Tenant D.M. has told the

Landlord that he will be moving out, but the Landlord said the Tenant did not indicate when.

The Tenant J.C. said that she has moved out of the unit and the Landlord's agent has been good to work with and has described the situation correctly. She said the two Tenants that have moved out want to have the tenancy ended and she said the remaining Tenant D.M. has not paid his share of the rent for February, 2011 of \$385.00 and his rent of \$385.00 for March, 2011.

The Landlord's agent requested an Order of Possession as soon as possible for the rental unit.

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 on February 13, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than February 18, 2011.

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 Tenant.

I also find that the Landlord is entitled to recover unpaid rent for February, 2011, in the amount of \$385.00. I further find that the Landlord is entitled to recover a loss of rental income for March, 2011 in the amount of \$248.38 (\$385.00 X 20 of 31 days of March, 2011). The Landlord has an obligation to mitigate his damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible.

As the Landlord has been successful in this matter, the Landlord / Landlord's agent will receive a monetary order for the balance owing as following:

Rent arrears:	\$385.00	
Loss of Rental Income:	\$248.38	
Subtotal:		\$633.38
Balance Owing		\$633.38

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$633.38 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*.

Residential Tenancy Branch