



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TEO CHIN KUI
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, MND, MNR, MNSD, MNDC, FF, O

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, for compensation for damage to the unit, site or property, to recover the filing fee for this proceeding, to keep the Tenants' security deposit in partial payment of those amounts and for other considerations.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by posting the documents on the door of the rental unit on May 7, 2016. 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 absence of the Tenants.

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 deposit?

Background and Evidence

This tenancy started on December 1, 2015 as a 6 month fixed term tenancy with an expiry date of May 30, 2016. Rent is \$800.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$400.00 at the start of the tenancy.

The Landlord said that the Tenant did not pay \$800.00 of rent for April, 2016 when it was due and as a result, on April 7, 2016 he posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 7, 2016 on the door of the Tenants' rental unit. The Landlord said the Tenants have unpaid rent of \$800.00 for May, 2016 as well.

The Landlord further indicated that the Tenants are moving but the Landlord requested and Order of Possession if his application is successful.

The Landlord also sought to recover the \$100.00 filing fee for this proceeding.

Further the Landlord said he understands he can make an application for damages once he knows the full costs to repair the unit. In this application the Landlord did not provide any cost or loss verification for the potential damages.

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 April 10, 2016. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than April 15, 2016.

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 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 April, 2016, in the amount of \$800.00 and the unpaid rent for May, 2016 in the amount of \$800.00.

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. 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:

	Rent arrears:	\$1,600.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$1,700.00
Less:	Security Deposit	\$400.00	
	Subtotal:		\$ 400.00
	Balance Owing		\$1,300.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$1,300.00 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: June 01, 2016

Residential Tenancy Branch