



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPT MNDC FF

Introduction

This application was brought by the tenants seeking an Order of Possession under section 54 of the Act when the landlord failed to provide vacant possession of the rental unit after having entered into an agreement to do so.

The tenants also sought leave to serve documents or evidence by a means other than those approved under the Act, withdrawn as that request was made in error, and to recover the filing fee for this proceeding.

This matter was originally set for hearing on October 20, 2008 but was postponed due to illness of the assigned Dispute Resolution Officer. However, the hearing was opened and the tenant advised of the new date. However, the landlord did not appear at the October 20, 2008 session or at the reconvened hearing on October 24, 2008.

Therefore, it proceeded in his absence.

Issue(s) to be Decided

This application requires a decision on whether the tenants are entitled to an Order of Possession and the effective date, and whether a Monetary Order is due, the amount, and if the filing fee included.

Background and Evidence

These parties entered into a standard form written rental agreement dated September 16, 2008. Under the agreement, the tenancy was to begin October 15, 2008 at a monthly rent of \$975 with a security deposit of \$487.00.

The rental unit in question is the upper unit of a suited residence. It is occupied by the landlord and the basement suite is rented to other tenants.

During the hearing, the tenant gave evidence that he had made an advance payment of \$900 to cover the damage and pet damage deposits. He stated that the parties had agreed to a move-in date of October 8, 2008 and the balance of rent was to be paid then. When he contacted the landlord that day, he was given a variety of explanations as to why the tenancy could not commence including a leaking roof, a recent break-in, etc. The landlord stated that he did not intend to proceed with the tenancy as agreed.

The tenant gave further evidence that he has had to leave his belongings in storage at a monthly rate of \$165.

Analysis

While the tenants have applied for an Order of Possession of the rental unit, in view of the fact that it is occupied by the landlord, enforcement of such order would become highly impractical. Therefore, as permitted under section 64(3)(c) of the *Act*, I have amended the tenants' application seek compensatory damages in lieu under section 67.

Accordingly, I find that the tenant is entitled to a Monetary Order for return of all money he has paid to the landlord plus recovery of one month's storage fees with Bridgeview Self Storage plus the equivalent of one month's rent in compensation for the landlord's breach of the rental agreement.

The Monetary Order is calculated as follows:

Return of tenants deposit	\$900.00
Cost of one month's storage fee	165.00
Equivalent of one month's rent	975.00
Filing fee	<u>50.00</u>
TOTAL	\$2,090.00

Conclusion

Thus, the tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$2,090.00 for service on the landlord.

Dated: October 24, 2008