



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MND, MNSD, MNDC, CNR, RR, FF

Introduction

This hearing dealt with two applications: 1) by the landlord for an order of possession, a monetary order for unpaid rent, compensation for loss of rental income, compensation for repairs to damage, an order to retain the security deposit in partial satisfaction of the claim, and recovery of the filing fee; 2) by the tenants for cancellation of a notice to end tenancy and for an order to allow the tenants to reduce the rent for repairs. The landlord's agent participated in the hearing and gave affirmed testimony. Despite the scheduling of this hearing, in part, as a result of their application for dispute resolution, the tenants did not participate in the hearing. Further, the landlord's agent stated that the landlord was not served with the tenants' application for dispute resolution or notice of hearing. Finally, the landlord's agent confirmed that the landlord's application for dispute resolution and notice of hearing was delivered in person to the tenants on November 21, 2008.

Issues to be Decided

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the *Act*

Background and Evidence

The month-to-month tenancy began on October 1, 2008. Rent in the amount of \$750.00 was payable in advance on the first day of each month. At the outset of the

tenancy the landlord collected a security deposit from the tenants in the amount of \$375.00.

As a result of complaints from other neighbours, the landlord issued a 1 month notice to end tenancy for cause dated October 20, 2008. Following this the tenants failed to pay rent for the month of November and on November 4, 2008 the landlord served the tenants with a 10 day notice to end tenancy. The landlord's agent submitted into evidence a copy of the 1 month notice and the 10 day notice to end tenancy.

The landlord's agent stated that only one of the tenants currently remains in the unit. The landlord's agent seeks a monetary order for unpaid rent for November, compensation for loss of rental income for December, and compensation for replacement of a broken window. Following receipt of an order of possession, the landlord's agent indicated that a further application for dispute resolution may be made by the landlord in order to seek a monetary order for compensation of costs associated with cleaning and repairs anticipated in the unit.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord's agent, I find that the tenants were served with a 1 month notice to end tenancy for cause and a 10 day notice to end tenancy for unpaid rent. The tenants did not dispute the 1 month notice. Neither did the tenants pay the outstanding rent within 5 days of receiving the 10 day notice and nor apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession.

As for the monetary order, I find the landlord has established a claim for \$1,940.00 which is comprised of unpaid rent for November (\$750.00), loss of rental income for December (\$750.00) and repair / replacement of a broken door / window (\$440.00). The landlord is also entitled to recovery of the \$50.00 filing fee (total claim: \$1,990.00).

I order that the landlord retain the security deposit of \$375.00 and interest of \$1.11 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of \$1,613.89.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 67 of the *Act* for **\$1,613.89**. This order must be served on the tenants and may be filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 9, 2008

Dispute Resolution Officer