



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: OPR, MNR, & FF

Introduction:

This hearing dealt with an application by the landlord requesting an Order of Possession and a monetary claim due to the tenants' failure to pay rent and utilities. Although the tenants were served in person with notice of this hearing and application, they did not attend. I proceeded with the hearing in their absence.

The landlord requested that the application be amended, requesting the right to retain the tenants' security deposit plus interest in partial satisfaction of this claim. I have granted this request and will determine whether the landlord may retain the tenants' security deposit plus interest in partial satisfaction of any damages established.

Issues to be Determined:

Is the landlord entitled to an Order of Possession due to the tenants' failure to pay rent and utilities? Is the landlord entitled to a monetary claim related to the loss rent and utilities?

Background and Evidence:

This tenancy began on June 1, 2008 for the monthly rent of \$700.00 and a security deposit of \$350.00 paid on May 17, 2008. The tenants have failed to pay rent and utilities for the months of November and December 2008.

On December 11, 2008 the landlord served the tenants a 10 day Notice to End Tenancy due to non-payment of rent and utilities in person. The tenants have not responded to the notice to end tenancy and have not vacated the rental unit. The landlord is also seeking loss of rent for January 1, 2009 as the tenants have failed to pay any rent for this month as well.

Analysis:

The tenants had 5 days to either pay the outstanding rent and utilities in full or to file an application to dispute the notice. Having failed to exercise either of these rights the tenants are conclusively presumed to have accepted the end of the tenancy pursuant to section 46(5) of the *Act*.

On this basis I grant the landlord's request for an Order of Possession effective **two (2) days** after it is served upon the tenants. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I also find that the tenants have failed to pay rent and utilities for the months of November and December 2008 for the sum of \$1,574.32. Although the landlord seeks a further sum of \$700.00 for the potential loss of revenue for January 2009 the landlord is expected to mitigate any losses. Therefore, I find it appropriate to grant the landlord the further sum of \$350.00 of lost rent for the period of January 1 to 15th, 2009. If the landlord experiences losses beyond this date he may file a further application for dispute resolution. I also find that the landlord is entitled to recover the \$50.00 filing fee paid for this application from the tenants.

I find that the landlord has established a total monetary claim of \$1,924.32. From this sum I Order that the landlord may retain the tenants' security deposit plus interest of \$353.28 in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance of **\$1,571.04**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion:

The landlord's application for dispute resolution is granted. The landlord will received an Order of Possession and a monetary claim due to the tenants' breach of the tenancy agreement.

Dated January 06, 2009.

Dispute Resolution Officer