



Dispute Resolution Services

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

Decision

Dispute Codes: CNR DRI MNR MNSD MT O OPR FF

Introduction

This hearing dealt with a cross applications by the parties. The landlord applied for 1) an order of possession; 2) a monetary order for unpaid rent and loss of income and; 3) an order to retain the security deposit in partial satisfaction of the claim. The tenants applied 1) for more time to make their application to cancel a notice to end tenancy; 2) to cancel the notice to end tenancy and: 3) to dispute an additional rent increase.

During the hearing, the tenants withdrew their application to dispute an additional rent increase.

Issues to be Decided

Whether the tenants should be allowed more time to make their application to cancel a notice to end tenancy?

Whether the landlord is entitled to an order of possession, a monetary order for unpaid rent and loss of income and an order to retain the security deposit in partial satisfaction of the claim?

Analysis

Issue #1 – Whether the tenants should be allowed more time to make an application to cancel a notice to end tenancy?

Section 46 of the *Residential Tenancy Act* requires the tenants to either pay the rent or to make an application for dispute resolution within 5 days after receiving a notice to end tenancy for unpaid rent. In this case, the tenants acknowledged receiving the notice to end tenancy on December 5, but they did not file their application for dispute resolution until December 17. The tenants explained that on December 5, they went into a Service B. C. office to file an application for dispute resolution. A staff member in the office told them that they should wait until they were served with a writ of possession. The tenants added that they did pay a \$50.00 filing fee on that day. When asked for proof of payment, the tenants were unable to provide any.

The landlord gave the following evidence pertaining to his communication with the tenants after December 5. On December 7, he talked to the tenants and told them that they had 3 days left to either pay the rent or file an application for dispute resolution. On that occasion, the tenants said that they were not going to pay the rent. On December 13, the landlord dropped off a letter to the tenants stating that they had to vacate the rental unit because they failed to respond to the notice to end tenancy. I note that this letter was submitted by the tenants as supporting evidence. On December 15, the landlord again talked to tenants. During this conversation, the tenants said to the landlord that he could not make them leave and that they would wait for a writ of possession.

Conclusion #1

Based on the above, I find that the tenants have not provided any serious or compelling reasons to explain their failure to file their application for dispute resolution within the prescribed time frame. Accordingly, I dismiss their application to allow them more time to make such an application.

Issues #2 – Whether the landlord is entitled to an order of possession, a monetary order for unpaid rent and loss of income and an order to retain the security deposit in partial satisfaction of the claim?

On August 21, 2008, the landlord collected a security deposit from the tenants in the amount of \$580.00. On each of the dates of October 1 and November 1, the landlord collected a partial pet damage deposit in the amount of \$100.00. The tenancy began on September 1. Rent in the amount of \$1150.00 is payable in advance on the first day of each month. The tenants failed to pay rent in the month of December and on December 5, the landlord served the tenants with a notice to end tenancy for non-payment of rent. The tenants further failed to pay rent in the month of January. The tenants admitted that they had failed to pay the December and January rent.

I find that the tenants were served with a notice to end tenancy for non-payment of rent. The tenants have not paid the outstanding rent and have not applied for dispute resolution to dispute the notice within the prescribed time frame and are therefore conclusively presumed 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. The tenants must be served with the order of possession. 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.

The landlord is seeking to recover from the tenants outstanding rent for the month of December in the amount of \$1150.00. The tenants are currently still living in the rental unit. The landlord is therefore seeking to include a claim for loss of income for the month of January in the amount of \$1150.00. I find that the tenants should reasonably have known that the landlord could not re-rent the unit while they were still in residence and I allow the claim for a further \$1150.00.

Conclusion #2

Based on the above, I find that the landlord has established a claim for \$1150.00 in unpaid rent and \$1150.00 in loss of income. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$783.79 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1566.21. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 16, 2009