



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: ET, OPR, CNR, & FF

Introduction:

This hearing dealt with cross applications by the parties. The tenants are seeking a request for additional time to dispute a 10 day Notice to End Tenancy and requesting to have the notice set aside. The landlord is seeking an Order of Possession based on the 10 day Notice to End Tenancy due to non-payment of rent by the tenants. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Are there exceptional circumstances which would allow the tenants additional time to dispute the Notice to End Tenancy? Should the notice be set aside?

Background and Evidence:

This tenancy began on August 1, 2008 for the monthly rent of \$485.00 and a security deposit of \$242.50 paid on July 28, 2008. The tenants paid the rent and security deposit through their government assistance; however, failed to pay rent in October and November 2008. The landlord served the tenants with a 10 day Notice to End Tenancy due to non-payment of rent on October 7, 2008.

On approximately November 14, 2008 the landlord received payment for the outstanding rent for October and November 2008 from the Ministry. The landlord provided the tenants with a receipt for use and occupancy only and did not reinstate the tenancy. The tenants failed to pay rent again for December 2008 and the landlord served a second 10 day Notice to End Tenancy on December 2, 2008.

The tenants filed to dispute the second notice but did not file an application to dispute the first notice served. The tenants did not provide any explanation as to why they did not dispute the first notice served on October 7, 2008.

The tenants alleged that they have been unable to have the rent paid through the Ministry because the landlord will not fill out an intent to rent form normally required. The landlord stated that the tenants have a tenancy agreement with all the pertinent information. The landlord acknowledged receiving a cheque from the Ministry in December 2008; however, this cheque was made out to the wrong name. It was returned.

The tenants could provide no explanation as to why their rent assistance through the Ministry stopped or why a cheque was sent in December 2008 under a name for which the landlord does not operate under. It is clear that the tenants originally had provided the Ministry with all the correct information required when the rent for the first two months and the security deposit were issued and received without any difficulty.

Analysis:

I deny the tenants' application and request for additional time to dispute the notices. The tenants have failed to provide any reason for not disputing the 10 day Notice to End Tenancy served on October 7, 2008. The tenants' failed to pay the outstanding rent within five days or to file an application to dispute the notice within five days. 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*.

I also reject the tenants' argument that their failure to pay rent in December 2008, and on for January 2009, is due to the failure of the landlord to provide them with the proper information required to establish their benefits through the Ministry. I am satisfied that the landlord provided all the required information at the start of the tenancy. This conclusion is supported by the evidence that the security deposit and first two months of rent were paid without any issue.

I find that the tenants are in breach of the tenancy agreement do to their failure to pay rent. 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 grant the landlord's request to recover the \$50.00 filing fee paid for this application from the tenants. I Order that the landlord may retain this sum from the tenants' security deposit plus interest.

Conclusion:

The tenants' application is dismissed. I have granted the landlord's application and granted an Order of Possession due to the tenants' failure to pay rent.

Dated January 16, 2009.

Dispute Resolution Officer