



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an order of possession, a monetary order for unpaid rent, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

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

No evidence of a written residential tenancy agreement was submitted for the month-to-month tenancy which the parties agree began on or about March 1, 2003. The parties also agree that a security deposit of \$420.00 was collected on or about March 1, 2003. Rent is payable in advance on the first day of each month and rent does not include utilities. Over the years, the amount of monthly rent has changed. Monthly rent for the years in question where rent is outstanding is as follows:

2007: \$844.86 2008: \$844.86 2009: \$876.12

The tenants failed to pay rent during the above years as follows:

2007: September, October, November & December

$\$844.86 \times 4 = \underline{\$3,379.44}$

2008: Full year's rent due: $\$844.86 \times 12 = \$10,138.32$

Amount of rent paid: \$1,472.43

Rent overdue: \$8,665.89

2009: January & February

$\$876.12 \times 2 = \underline{\$1,752.24}$

Total rent in arrears: \$13,797.57

The landlord served the tenants with a 10 day notice to end tenancy for unpaid rent dated November 26, 2008 which was served in person on the tenant(s) that same day. The tenants further failed to pay rent for the months of December 2008, and January & February 2009.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent. The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not 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 which was December 7, 2008. Accordingly, 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 \$13,897.57 which is comprised of \$13,797.57 in unpaid rent in addition to the \$100.00 filing fee for this application. I order that the landlord retain the security deposit of \$420.00 plus interest of \$14.87, and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of \$13,462.70 ($\$13,897.57 - \434.87).

Conclusion

I hereby issue an order of possession in favour of the landlord effective no later than **1:00 pm on February 28, 2009**. 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 **\$13,462.70**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: February 17, 2009

Dispute Resolution Officer