



Dispute Resolution Services

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

DECISION

Dispute Codes: OPR, MNR and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served December 22, 2008 by registered mail. The landlord also sought a Monetary Order for the unpaid rent, utilities, and filing fee for this proceeding, and authorization to retain the security deposit.

The notice to end tenancy set erroneously set an end of tenancy date at March 1, 2009.

Despite being served with the Notice of Hearing, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and the effective date, and whether a Monetary Order is due, the amount, whether the filing fee should be included and whether the landlord should be authorized to retain the security deposit.

Background and Evidence

This tenancy began March 1, 2008 under a 12-month fixed term agreement. Rent is \$1,100 per month and the landlord holds a security deposit of \$550 paid on February 4, 2008. By an addendum to the rental agreement, the tenants agreed to pay one-third of the utilities for the rental building.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenants had not paid the rent from August 2008 or utilities billed for the July to October period. At present, the figures for the balance of the utilities since is not available.

The tenants remain in the rental unit and continued to pay no rent for January or February.

Analysis

Section 46 of the *Act* which deals with notice to end tenancy for unpaid rent provides that a tenant may pay the overdue rent or make application for dispute resolution within five days of receiving the notice. If the tenant does neither, they are presumed to have accepted that the tenancy ends on the date stated on the notice. In this matter, the tenants have not paid the rent or utilities and have not made application to dispute the notice.

As to the end date set on the notice, the landlord stated that he had misunderstood the form and filled in the date on which the tenancy ends on the fixed term agreement. As the notice is clearly titled, "10-day Notice to End Tenancy for Unpaid Rent or Utilities," I find that the date was an obvious error.

Section 55(3) of the *Act* provides that an Order of Possession may be granted “before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Accordingly, I find that the landlord should not be forced to continue this tenancy in which rent and utilities have not been paid for several months,

Therefore, the landlord requested, and I find he is entitled to, an Order of Possession in support of the Notice to End Tenancy to take effect two days from service of it upon the tenants.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for each month since August and for one-third of the utilities bills submitted into evidence with a copy of a request for payment to the tenants and now totaling \$1,350.

Therefore, including filing fee and authorization to retain the security deposit in set off against the balance, I find the tenants owe the landlord an amount calculated as follows:

August rent	\$1,100.00
September rent	1,100.00
October rent	1,100.00
November rent	1,100.00
December rent	1,100.00
January rent	1,100.00
February rent/loss of rent	1,100.00
Unpaid utilities	1,350.00
Filing fee	100.00
Sub total	\$9,150.00
Less retained security deposit	- 550.00
Less interest	- 7.55
TOTAL	\$8,592.45

Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective two days from service of it on the tenants and a Monetary Order for **\$8,592.45**.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia.

The landlord remains at liberty to make application for the balance of utilities when final figures become available.

February 3, 2009

Dispute Resolution Officer