



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MND, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for damages to the rental unit as well as to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?

Background and Evidence

This month to month tenancy started on November 1, 2008. Rent is \$750.00 per month payable on the 1st day of each month. The Landlord claimed the Tenants gave him 2 cheques in late December, 2008 for January, 2009 rent but they were returned for non-sufficient funds. Consequently, on January 2, 2009 the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on the Tenants' door. Both Parties agree that rent is unpaid for January and February, 2009.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or in this case, on January 5, 2009. Consequently, the Tenants would have had to pay the amount on the Notice or apply to

dispute that amount within 5 days, or no later than January 12, 2009 (as January 10th fell on a Saturday).

I find that the Tenants have not paid the amount indicated on the Notice and have not applied for dispute resolution. Consequently, pursuant to section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice or on January 15, 2009.

The Landlord requested and I find pursuant to s. 55(2)(b) of the Act that he is entitled to an Order of Possession to take effect at 1:00 p.m. on February 28, 2009. I also find that the Landlord is entitled to recover rent arrears in the amount of \$1,500.00 as well as the \$50.00 filing fee for this proceeding. I find that the Landlord's application for damages to the rental unit is premature and that part of his application is dismissed with leave to reapply.

Conclusion

An Order of Possession effective at 1:00 p.m. on **February 28, 2009** and a Monetary Order in the amount of **\$1,550.00** have been issued to the Landlord and a copy of the Orders must be served on the Tenants. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.