



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: OPR, MNR, MNSD, & FF

Introduction

This conference call hearing was conducted following the decision of February 26, 2009 where a Direct Request Proceeding by the landlord was reconvened. Both the landlord and the tenants appeared for the hearing and were provided the opportunity to be heard and to respond to the evidence of the other party.

This hearing dealt with the landlord's application for an Order of Possession and a monetary claim related to non-payment of rent by the tenants. The landlord also seeks to retain the tenants' security deposit plus interest in partial satisfaction of this claim.

Issues to be Determined

Have the tenants failed to pay rent and failed to dispute the 10 day Notice to End Tenancy? Was the 10 day Notice to End Tenancy served on February 7, 2009? Is the landlord entitled to an Order of Possession and a monetary claim related to non-payment of rent by the tenants?

Background and Evidence

This tenancy began on January 1, 2007 for the monthly rent of \$850.00 and a security deposit of \$425.00. The landlord provided a written statement and oral testimony from a witness confirming that the landlord posted a 10 day Notice to End Tenancy due to non-payment of rent on the tenants' door on February 7, 2009. Since that time the tenants have not paid the outstanding rent owed and also have failed to pay the rent owed for March 2009 for a total sum of \$1,700.00. The landlord is seeking an Order of Possession and a monetary claim for the loss of rent. The landlord also seeks to retain the tenants' security deposit plus interest in partial satisfaction of this monetary claim.

One of the tenants appeared for the hearing and acknowledged receiving the 10 day Notice to End Tenancy. The tenant indicated that they attempted to dispute the notice by filing an application for dispute resolution. However, the tenant confirmed that the application was not completed as they could not pay the filing fee without coming to one of the offices of the Residential Tenancy Branch. The tenant was unable to tell me the date on which they attempted to file an application disputing the 10 day Notice to End Tenancy.

The tenant acknowledged that they have withheld the rent owed to the landlord. The tenant alleged that the landlord has failed to provide proper heat to the rental unit and address other issues and therefore they have not paid the rent owed.

Analysis

Section 46 of the *Act* provides that notice to end the tenancy can be served if a tenant fails to pay the rent as agreed to in the tenancy agreement. Section 46(4) of the *Act* provides that the notice can be disputed if a tenant fills an application for dispute resolution within five days of receiving the notice or the notice can be cancelled if the outstanding sum owed is paid within five days of receiving the notice. Section 46(5) of the *Act* states that if a tenant fails to exercise either of these rights then they are conclusively presumed to have accepted the end of the tenancy.

Although the tenant could not provide the date that they submitted an application to dispute the 10 day Notice to End Tenancy during the hearing, a copy of the application was provided. The tenants did not initiate an application to dispute the 10 day Notice to End Tenancy until March 6, 2009. This is beyond the allowable timeframe given under section 46(5) of the *Act*. I also find that the tenants failed to complete the application process and therefore the application has never been completed.

I also do not accept the tenants' argument for withholding rent. Although the tenants believed they had grounds to withhold the rent, section 26 does not allow a tenant to withhold rent for any reason. The proper method to address their concerns was to file an application for dispute resolution.

I accept the landlord's application. I accept that the tenants were served with a 10 day Notice to End Tenancy on February 7, 2009 and that the tenants failed to either pay the sum owed or file an application to dispute the notice in the five days provided under the *Act*. On this basis I grant the landlord's application 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 find that the landlord has established a total monetary claim for the sum of \$1,750.00 comprised of two month's outstanding rent plus the recovery of the \$50.00 filing fee paid for this application. I Order that the landlord may retain the tenants' security deposit plus interest of \$437.50 in partial satisfaction of this claim.

I grant the landlord a monetary Order for the remaining balance owed of **\$1,312.50**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is granted and an Order of Possession and a monetary Order has been issued due to the tenants' failure to pay rent.

Dated March 16, 2009.

Dispute Resolution Officer