



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent and utilities, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent to the tenants by registered mail on April 14, 2009. The tenants did not collect the letter and it was returned to the landlord. The Notice is deemed to have been served five days after service whether or not the tenants have collected this letter.

The landlord appeared and gave his testimony, he was provided the opportunity to present his evidence orally, in written form, documentary form and make submissions to me.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to a Monetary Order to recover the filing fee?

Background and Evidence

The tenants have been residing at the rental unit and the rent is \$1500.00 per month payable on the 1st of each month. The tenants paid a partial payment towards their rent for March of \$1,300.00 which left a balance of \$200.00 owing. The landlord served the tenants with a 10 Day Notice to End Tenancy on March 25, 2009 which was served in person to one of the tenants. The tenants had five days to either pay the rent or dispute the notice.

The tenants did not dispute the Notice or pay their rent within five days of this Notice. The tenants did not pay their rent for April on the due date and the landlord filed an application for Dispute Resolution on April 09, 2009. The tenants paid the rent owing for March and April of \$1,700.00 on April 16, 2009. The landlord has accepted this payment for use and occupancy only and still requests an Order of Possession.

Analysis

Order of Possession – I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the Act, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Monetary Order- As the tenant no longer owes rent this section of the landlords' application is dismissed.



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Security Deposit- As the tenants have paid their rent the landlord no longer has a right to keep the security deposit towards outstanding rent payments and this section of his application is dismissed.

Recovery of the Filing Fee - \$50 – I find that the landlord has succeeded in part and is entitled to recover the filing fee from the tenant.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service upon the tenants. This order must be served on the tenants, once served; this Order can be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord has been granted a Monetary Order for **\$50.00**. This order must be served on the tenants, once served; this Order can be filed with the Provincial Court (Small Claims) of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 21, 2009.

Dispute Resolution Officer