



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application from the landlord for an order of possession, a monetary order in compensation for unpaid rent / loss of rental income, and recovery of the filing fee for this application. 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

Pursuant to a written residential tenancy agreement, the term of tenancy is from October 1, 2008 to November 7, 2009. Rent in the amount of \$1,585.00 is payable in advance on the first day of each month.

The tenants failed to pay all rent due on the first of the month for February 2009. Specifically, \$575.00 remains outstanding. Accordingly, the landlord issued a 10 day notice to end tenancy for unpaid rent. Subsequently, the tenants failed to pay all rent due on the first of the month for March and April 2009. In particular, further to the amount of \$575.00 which is still outstanding for February, the tenants are in arrears with rent for March in the amount of \$585.00 and for April in the amount of \$590.00. The landlord informed the tenants that his acceptance of partial payments of rent is for “use and occupation only.”

The landlord submitted into evidence a copy of the 10 day notice dated February 6, 2009 which the tenant acknowledged having received.

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 February 25, 2009. Accordingly, I find that the landlord is entitled to an order of possession to be effective not later than two (2) days after service upon the tenants.

As for the monetary order, I find that the landlord has established a claim of \$2,592.50. This is comprised of unpaid rent of \$575.00 for February, unpaid rent of \$585.00 for March, unpaid rent of \$590.00 for April, one half month's loss of rental income of \$792.50 for May, in addition to recovery of the \$50.00 filing fee. I therefore grant the landlord a monetary order under section 67 of the Act for \$2,592.50.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenants. 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 **\$2,592.50**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: May 1, 2009

Dispute Resolution Officer