



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?

Background and Evidence

This tenancy started on April 1, 2000. Rent is \$813.00 per month payable in advance on the 1st day of each month. The Landlord said that the Tenants did not pay rent for July 2009 when it was due and as a result, on July 14, 2009, the Tenants were served in person with a 10 Day Notice to End Tenancy for Unpaid Rent. The Tenants paid July and August 2009 rent on July 30, 2009 and were given a receipt from the Landlord's witness stating that the payment was accepted "for use and occupancy." The Tenants currently have rent arrears for September and October 2009 and have not paid rent for November 2009.

The Tenants argued that the Landlord's witness gave them permission to pay July's rent on July 30, 2009. The Landlord's witness denied this and said that was why he put "for use and occupancy" on the receipt he gave to the Tenants for their July rent payment.

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. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than July 20, 2009.



Dispute Resolution Services

Page: 2

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I find that the Tenants did not pay July 2009 rent arrears within 5 days of receiving the 10 Day Notice and did not apply for dispute resolution. I also find on a balance of probabilities that the Tenants did not have the permission of the Landlord to pay rent later than required by the Notice. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

I also find that the Landlord is entitled to recover rent arrears for September and October 2009 in the amount of \$1,626.00, rent for November 1 - 4, 2009 in the amount of \$108.40, a loss of rental income for November 5 – 15, 2009 in the amount of \$298.10 as well as the \$50.00 filing fee for this proceeding. The Landlord may reapply for a loss of rental income if it is necessary. The Landlord will receive a monetary order as follows:

September 2009 rent:	\$813.00
October 2009 rent:	\$813.00
November 2009 rent:	\$108.40
Loss of rental income:	\$298.10
Filing fee:	<u>\$50.00</u>
BALANCE OWING:	\$2,082.50

Conclusion

An Order of Possession effective 48 hours after service of it on the Tenants and a Monetary Order in the amount of **\$2,082.50** have been issued to the Landlord. 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.

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: November 04, 2009.

Dispute Resolution Officer