



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary claim related to the tenants failure to pay rent and the tenants failure to vacate the rental unit after providing written notice ending the tenancy. The landlord appeared, gave affirmed testimony and was provided the opportunity make submissions to me.

The landlord testified that the tenants were served with notice of this application and hearing in person on October 8, 2010 in the morning. I accept the landlord's evidence, in the absence of any evidence to the contrary that the tenants have been served with notice of this application and hearing. I proceeded with the hearing in the tenants' absence.

Issues(s) to be Decided

Have the tenants failed to vacate the rental unit after providing written notice to end the tenancy, entitling the landlord to an Order of Possession?

Have the tenants been over holding in the rental unit, entitling the landlord to compensation due to lost rent?

Background and Evidence

This tenancy began on June 1, 2010 for the monthly rent of \$700.00 and a security deposit of \$350.00 paid on May 20, 2010.

On August 31, 2010, while paying rent, the tenants gave the landlord written notice to end the tenancy. The landlord provided a copy of this written note which is reproduced below:

"I [the tenant] give my one month notice on August 31, 2010 at XXXX – Xth Ave."

[Not Reproduced as Written]

The landlord accepted this note to mean that the tenants would be vacating the rental unit by September 30, 2010; however, at the end of the month one of the tenants told the landlord that they could not find a new place to live and they would not be vacating. The landlord testified that the tenants also failed to pay any rent for remaining in the rental unit.

The landlord requests an Order of Possession effective immediately and seeks a monetary Order for the sum of \$700.00 due to the tenants' failure to pay rent for October 2010.

Analysis

I grant the landlord's application.

I find that the note accepted by the landlord was intended to give notice to end the tenancy effective September 30, 2010 not August 31, 2010 as written by the tenants. Although the notice does not comply with section 52 of the *Act* because it does not provide a proper effective date, I find that the effective date of the notice is automatically corrected pursuant to section 53(2) of the *Act* which provides that if an effective date is earlier than the earliest dated permitted, then the effective date is deemed to be the correct date. In this case the tenants identified the effective date as August 31, 2010 and the earliest effective date for their notice pursuant to section 45 of the *Act* was September 30, 2010.

I accept that the tenancy ended effective September 30, 2010 and I accept that the tenants failed to vacate the rental unit. On this basis I grant the landlord's request for an Order of Possession effective **two (2) days** after it has been served upon the tenants.

I accept the landlord's evidence that the tenants have failed to pay the rent owed for October 2010 for the sum of \$700.00. I also grant the landlord's request that the tenants reimburse the landlord for the cost of filing this application for the sum of \$50.00.

I find that the landlord has established a total monetary claim for the sum of \$750.00 and order that the landlord may retain the tenants' security deposit of \$350.00 in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance owed of **\$400.00**.

Conclusion

I grant the landlord's application.

I find that the landlord is entitled to an Order of Possession of the rental unit effective **two (2) days** after it has been 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 find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenants for the sum of **\$750.00**. This Order may be served on the tenants. This Order may be filed with the Province of British Columbia Small Claims Court 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: October 22, 2010.

Dispute Resolution Officer