



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for a loss of rental income and to recover the filing fee for this proceeding. The Landlord withdrew his claim to keep the Tenants' security deposit.

At the beginning of the hearing the Tenants claimed that they had also filed an application to cancel a Notice to End Tenancy for Unpaid Rent and for an order allowing them to deduct from their rent the cost of repairs services or facilities. The Tenants confirmed, however, that they had not picked up their hearing packages and served a copy on the Landlord as required by s. 59 of the Act. Consequently, the Tenants' application was cancelled.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This fixed term tenancy started on April 15, 2010 and expires on March 31, 2011. Rent is \$1,200.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$600.00 on March 12, 2010.

The Tenants did not pay rent for September 2010 when it was due and as a result on September 9, 2010 the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent dated September 9, 2010 by posting it on the rental unit door. The Tenants have not paid rent for September or October 2010. The Tenants admit that they withheld their rent but claimed they did so because there were significant problems with the rental unit and as a result, the Landlord promised to relocate them to another rental unit. However, the Tenants claimed that the Landlord instead re-rented the other residence to someone else and they currently do not have the use of the whole rental unit and do not have plumbing.



Dispute Resolution Services

Page: 2

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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 overdue rent 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 they must vacate the rental unit at that time. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or on September 12, 2010. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than September 17, 2010.

I find that the Tenants have not paid the overdue rent and that their application for dispute resolution to cancel the Notice was cancelled because they did not pick up (and serve) their hearing packages. Although the Tenants claimed that they withheld their rent as a result of the Landlord's failure to make repairs or relocate them, the Act does not permit a Tenant to withhold their rent unless they have already received an Order from the Residential Tenancy Branch authorizing them to do so or they have paid for emergency repairs and complied with the procedure set out under s. 33 of the Act. I find that the Tenants were not authorized under the Act to withhold their rent. 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 on October 31, 2010.

I also find that the Landlord is entitled to recover rent arrears in the amount of \$2,400.00 for September and October, 2010, 2 late fees of \$25.00 each for September and October 2010 as well as the \$50.00 filing fee for this proceeding. I find that the Landlord's application for a loss of rental income for November 2010 is premature and it is dismissed with leave to reapply.

Conclusion

An Order of Possession effective at 1:00 p.m. on October 31, 2010 and a Monetary Order in the amount of **\$2,500.00** 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: October 21, 2010.

Dispute Resolution Officer