



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on November 24, the tenants did not participate in the conference call hearing.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The tenancy began on or about May 1, 2010 and was set to run for a fixed term of one year, expiring on April 30, 2010. Rent in the amount of \$1,800.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenants security and pet deposits each in the amount of \$900.00. The tenants failed to pay \$900.00 of their rent in the month of October and paid no rent whatsoever in the month of November. On November 2 the landlord served the tenants with a notice to end tenancy by mailing it via registered mail. The tenants further failed to pay rent in the month of December. The landlord seeks to recover rental arrears as well as all rent owing throughout the fixed term.

Analysis

Based on the landlord's undisputed testimony, I find that the tenants were served with a notice to end tenancy for non-payment of rent. The tenants did not pay the outstanding rent

within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. The tenants must be served with the order of possession. 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.

As for the monetary order, I find that the tenants failed to pay \$1,000.00 in rent for the month of October and \$1,800.00 in rent for the month of November. I find that because the tenants did not vacate the unit pursuant to the notice to end tenancy, they caused the landlord to lose \$1,800.00 in income for the month of December. Although the landlord anticipates losing further revenue, he has an obligation to mitigate his losses and attempt to re-rent the unit. I therefore dismiss with leave to reapply the claim for lost income for January – April 2011. The landlord paid a \$100.00 filing fee because his claim was over \$5,000.00. Had the landlord limited his claim to rent for October – December inclusive, he would have paid just a \$50.00 filing fee. I find that the landlord is entitled to recover the \$50.00 it would have cost had he limited his claim to his realized losses.

The landlord is awarded a total of \$4,650.00. I order that the landlord retain the \$1,800.00 in deposits and I grant the landlord an order under section 67 for the balance due of \$2,850.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$2,850.00. The landlord may retain the security deposit.

Dated: December 10, 2010

Dispute Resolution Officer