



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, & FF

Introduction

This hearing dealt with the landlord's application seeking an Order of Possession and a monetary claim due to the tenants' failure to pay rent.

The landlord appeared for the hearing, provided documentary evidence in advance of the hearing in accordance with the rules of procedure and presented affirmed oral testimony. The tenants did not appear.

The landlord stated that each tenant was served with notice of this application, hearing and evidence by registered mail on December 22, 2010. Based on the documentary evidence provided by the landlord, I am satisfied that the tenants were served with notice of this proceeding by registered mail and I deem that the tenants received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

I proceeded with the hearing in the tenant's absence.

Issue(s) to be Decided

Did the tenants breach the tenancy agreement by failing to pay the rent entitling the landlord to an Order of Possession and monetary relief?

Background and Evidence

The landlord submitted that the tenants have failed to pay rent for many months and provided a ledger which states that the tenants owed the sum of \$4,075.00 when the landlord took over management of the tenancy in October 2010.

The landlord stated that the tenants failed to pay the rent owed of \$1,200.00 in October and November 2010 increasing the outstanding rent to \$6475.00. On November 4, 2010 the landlord received two payments from the ministry on behalf of the tenants in the

amount of \$1,200.00 reducing the amount owed to \$5,275.00. In December 2010 the tenants paid the sum of \$700.00 leaving an outstanding balance owing of \$5,775.00.

On December 7, 2010 the landlord served the tenants with a 10 day Notice to End Tenancy Due to Unpaid Rent by registered mail.

The landlord seeks an Order of Possession and a monetary claim related to the tenants' failure to pay the rent.

The landlord did not provide a copy of the tenancy agreement and did not have detailed accounting of the alleged unpaid rent prior to October 2010.

Analysis

Based on the evidence provided by the landlord and in the absence of evidence to the contrary, I find that the tenants have failed to pay the rent as required by the tenancy agreement.

Tracking information provided by the landlord shows that the tenants failed to claim the documents sent; however, pursuant to section 90(a) of the *Act* I deem the tenants received the notice on the 5th day after it was sent, or on December 12, 2010.

Having deemed the tenants as being served with a 10 day Notice to End Tenancy due to Unpaid rent, I find that the tenants failed to pay the outstanding rent or to file an application for Dispute Resolution to dispute the notice in the five days provided by section 46(4) of the *Act*.

Pursuant to section 46(5) of the *Act*, I find that the tenants have conclusively accepted the end of the tenancy agreement effective December 22, 2010 and on this basis I grant the landlord's application seeking an Order of Possession for the rental unit.

I dismiss the landlord's application for monetary relief with leave to re-apply. The landlord did not provide the evidence of the amount allegedly owed by the tenants prior to taking over management of the tenancy. Therefore, although I am satisfied that the tenants failed to pay the rent as required by the *Act*, the landlord did not provide sufficient evidence to support the monetary claim. I have granted the landlord leave to re-apply as I was satisfied that the failure to provide the documentation was an oversight due to the landlord only recently taking over the tenancy. I strongly caution the landlord that failure to provide sufficient evidence could result in a claim being dismissed without leave to re-apply.

Conclusion

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.

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: January 18, 2011.

Residential Tenancy Branch