



Dispute Resolution Services

Page: 1

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 for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The tenants did not appear at the hearing. The manager testified that he served each tenant with notification of this hearing via registered mail sent on December 29, 2010 and that the tenants are still residing in the rental unit. The landlord provided a copy of the registered mail receipts as proof of service. I was satisfied the tenants were served with the hearing package in a manner that complies with the Act and I proceeded to hear from the landlord without the tenants present.

On a procedural note, the landlord requested the application be amended to correct the spelling of the landlord's name. I granted the request and this decision and the orders that accompany it reflect the correct spelling of the landlord's name.

The landlord also requested the application be amended to include loss of rent for the month of January 2011 as the tenants continue to reside in the rental unit. I granted the request for amendment and have considered the landlord's request for loss of rent for January 2011 in making this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent and loss of rent?

Background and Evidence

The landlord provided the following undisputed evidence. The parties signed a tenancy agreement on December 29, 2009 for a month-to-month tenancy to commence January 15, 2010. The tenants paid a \$480.00. The tenants were required to pay rent of \$960.00 on the 1st day of every month. The tenants did not pay rent for December 2010 and on December 13, 2010 the manager posted a 10 Day Notice to End Tenancy for

Unpaid Rent (the Notice) on the tenants' door. The tenants have not paid the landlord any monies since the 10 Day Notice was posted and continue to reside in the rental unit.

Provided as documentary evidence for this hearing was a copy of the tenancy agreement, 10 Day Notice and registered mail receipts.

Analysis

Pursuant to section 46 of the Act, when a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date.

I am satisfied the landlord served the tenants with a 10 Day Notice and the tenants did not pay the outstanding rent or dispute the Notice. Since the Notice was posted it was deemed to be received three days later and the effective date changes to December 26, 2010 in accordance with section 53 of the Act. Accordingly, I find the tenancy ended December 26, 2010.

Since the tenants continue to occupy the rental unit the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two days after service of the Order of Possession upon the tenants. The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

Based upon the evidence before me, I am satisfied that the landlord is entitled to recover unpaid rent of \$960.00 from the tenants for the month of December 2010 and I award the landlord loss of rent for the month of January 2011.

As the landlord was successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenants' security deposit in partial satisfaction of the rent owed by the tenants. I provide for the landlord with this decision a Monetary Order calculated as follows:

Unpaid rent – December 2010	\$ 960.00
Loss of rent – January 2011	960.00
Filing fee	50.00
Less: security deposit	<u>(480.00)</u>
Monetary Order	<u>\$ 1,490.00</u>

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenancy has ended for unpaid rent and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order in the amount of \$1,490.00 to serve upon the tenants.

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 19, 2011.

Residential Tenancy Branch