



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent.

The hearing was conducted via teleconference and was attended by the landlord only. The tenants did not attend.

The landlord testified that she served the tenants with notice of this hearing and the Application for Dispute Resolution on June 15, 2011 personally. Based on this testimony, I find that the tenants have been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on January 27, 2009 for a 1 year fixed term tenancy beginning on February 1, 2009 that converted to a month to month tenancy on February 1, 2010 for the current monthly rent of \$1,840.00 due on the 1st of each month and a security deposit of \$900.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 12, 2011 with an effective vacancy date of April 22, 2011 due to \$1,800.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of April, May, June and July 2011 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on April 12, 2011.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

However the landlord testified tenants did pay \$900.00 on April 26, 2011 and \$1,050.00 on May 5, 2011 that contributed to the full payment of rent for April, 2011. The landlord provided further testimony that since April 1, 2011 the rent owed for the rental unit has totalled \$7,280.00 and the tenant has paid a total of \$5,640.00 but that \$1,800.00 of that was received on July 4, 2011 via cheque that has not yet cleared.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on April 12, 2011 and the effective date of the notice is April 22, 2011. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of \$3,490.00 comprised of \$3,440.00 rent owed and the \$50.00 fee paid by the landlord for this application. I note that this amount may be reduced by \$1,800.00 should the cheque received by the landlord clears.

I grant a monetary order in the amount of \$3,490.00. This order must be served on the tenants. If the tenants fail comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 05, 2011.

Residential Tenancy Branch