



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

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

The landlord provided testimony that she served both tenants individually with notice of this hearing personally on July 11, 2011 and that this service was witnessed by a third party. I accept the tenants were served sufficiently for this proceeding.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; an order of possession as per the end of a fixed term tenancy; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement originally signed by the parties on January 16, 2011 for a 6 month fixed term tenancy beginning on February 1, 2011 and ending on August 1, 2011 for a monthly rent of \$1,100.00 due on the 1st of each month and a security deposit of 550.00 was paid.

A clause in the tenancy agreement that is initialled by all parties requires the tenants to vacate the rental unit at the end of the fixed term. The landlord submits that at least one of the tenants has advised her that he wants to fight the need to vacate the rental unit.

The landlord also testified the tenants failed to pay the rent that was due on July 1, 2011 and she issued a 10 Day Notice to End Tenancy for Unpaid Rent on July 2, 2011 and served it to the tenants the same day citing \$1,100.00 due on July 1, 2011 was not paid.

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.

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 July 2, 2011 and the effective date of the notice is July 12, 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.

As I have found the tenants have accepted the end of the tenancy based on the 10 Day Notice to End Tenancy for Unpaid Rent, I make no finding on the landlord's application for an order of possession based on the end of the fixed term.

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 **\$1,150.00** comprised of \$1,100.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$550.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$600.00**. This order must be served on the tenants. If the tenants fail to 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 26, 2011.

Residential Tenancy Branch