



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began December 15, 2010 with monthly rent of \$2700.00 and the tenants paid a security deposit of \$1050.00 and a pet damage deposit of \$900.00.

On August 5, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants have not filed to dispute this notice.

The landlord testified that the tenants have not paid any rent since June 2011 and currently owe the landlord \$20,100 in unpaid rent. The landlord stated that the tenants owe rent for the following: February 2011-\$1200.00, March through September 2011-\$2700.00 per month.

The landlord stated that the tenants kept promising to pay the rent or at minimum give the landlord payments towards the rent but that they never came through on their promise. The landlord stated that after being served with the notice to end tenancy the tenants called him and told him they would make 2 payments but that the tenants have paid no money to the landlord.

The landlord stated that the tenants had damaged the dishwasher and that he was seeking \$52.00 of the \$10416 bill from the tenants. The landlord is also seeking \$15.00 in returned cheque fees that he was charged by the bank.

The landlord in this application is seeking compensation for unpaid rent and an order of possession for the rental unit.

The tenant acknowledged that they owed the landlord \$20,100 in unpaid rent and stated that they had been going through a very difficult time and fully intended on paying the landlord all the back rent that is owed to him. The tenant expressed an interest in making payment arrangements with the landlord and may pursue this possibility outside of this hearing.

Both parties in this hearing agreed to the amount of \$20,110 as the rent owed to the landlord and the application has been amended to reflect this amount per Residential Tenancy Act Section 64 (3)(c).

Analysis

Based on the documentary evidence and testimony of the parties I find that the tenant was properly served with a notice to end tenancy for non-payment of rent. The tenant 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 is 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 and a monetary order for unpaid rent.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Accordingly I find that the landlord is entitled to a monetary order for \$20, 100.00.

The landlord's application is for unpaid rent and not for damages to the rental unit therefore the landlord's \$52.00 claim for the dishwasher is dismissed with leave to reapply.

As the landlord does not have returned cheque fees noted in the tenancy agreement as being payable by the tenants therefore the landlord is not entitled to recovery of this \$15.00 portion of the claim.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenants. This Order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$20,100.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I hereby grant the landlord a monetary order under section 67 for the amount of **\$20,100.00**.

If the amount is not paid by the tenants, the Order may be filed in the Provincial (Small Claims) 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: September 15, 2011.

Residential Tenancy Branch