



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 conference call and was attended by two agents for the landlord and the female tenant.

The landlord submitted confirmation that on September 1, 2011 the landlord served the tenants with notice of hearing documents via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the submission of the landlord, I find that the tenants have been sufficiently served with the notice of hearing documents pursuant to the *Residential Tenancy Act (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; 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, 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 October 22, 2010 for a 1 year fixed term tenancy beginning on November 1, 2010 for the monthly rent of \$1,199.00 due on the 1st of each month and a security deposit of \$599.50 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 19, 2011 with an effective vacancy date of August 29 due to \$1,031.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of August and September 2011 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on August 19, 2011 at 10:30 a.m.

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. The landlord's agent testified that the tenants have paid \$2,000.00 since the notice was issued, leaving a balance of \$230.00 and that the landlord issued a receipt noting that the rent was accepted for use and occupancy only.

Analysis

I have reviewed all documentary evidence 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 August 22, 2011 and the effective date of the notice is amended to September 1, 2011, pursuant to Section 53 of the *Act*. 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 **\$300.00** comprised of \$250.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit and interest held in satisfaction of this claim leaving a balance of \$299.50 in the security deposit to be administered until the end of the tenancy in accordance with the *Act*.

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 28, 2011.

Residential Tenancy Branch