



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the tenants by way of registered mail sent on January 20th, 2012 and provided a Canada Post tracking number for each tenant. The tenants did not participate and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a condominium in a multi-unit complex. The landlord's agent testified that starting in October 2011 the public trustee became guardian of the owner's estate, and as such landlord of the rental unit. The agent said that she did not have a

copy of the tenancy agreement, but that the tenants already occupied the unit. She stated that the tenants understood that rent was \$1000.00 per month, and that it was due on the first of each month.

The landlord's agent stated that the tenants have been late paying rent since taking over the tenancy, and that 10 Day Notices to End Tenancy were served on the tenants for each month. She stated that on January 6th, 2012, she served the tenants in person with the 10 Day Notice, that she received partial payment of \$500.00, and that the tenants said that they would pay the balance before the 5 day time line of January 16th, 2012 set by the notice. The landlord's agent said that the tenants did not pay the balance by January 16th, and provided a copy of a receipt showing that the tenants paid the balance on January 20th, 2012.

In her documentary evidence, the landlord's agent provided a copy of the 10 Day Notice to End Tenancy dated January 6th, 2012, with an effective date of January 16th, 2012. She stated that she called the tenants on the 16th, and that they said that they were not going to move out.

The landlord's agent withdrew the aspect of her application for unpaid rent and is seeking an order of possession.

Analysis

I accept the landlord's undisputed testimony that she served the tenants with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenants knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to

have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenants in this matter have not filed an application for dispute resolution, and according to the evidence, rent was not paid by January 16th, 2012. The 10 Day Notice to End Tenancy is therefore valid and on that basis the landlord is entitled to an order of possession.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Since the landlord was successful, I grant the landlord a monetary order of \$50.00 to recover the filing fee for this application.

This Order may be registered in the Small Claims Court 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: January 31, 2012.

Residential Tenancy Branch