



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee.

The landlord participated in the conference call hearing but the tenants did not. The landlord presented evidence that the tenants were served with the application for dispute resolution and notice of hearing in person. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began October 2009 with monthly rent of \$4500.00 per month and the tenants paid a security deposit of \$2250.00.

On November 13, 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 owe a balance of \$2500.00 on the August 2011 rent and that the \$4500.00 monthly rent for December 2011 through January 2012 remains unpaid. The landlord stated that in total the tenants owe the landlord \$25,000.00 in unpaid rent.

As the tenants remain in the rental unit and the rent remains unpaid, the landlord in this application is seeking a monetary order for \$25,000.00 in unpaid rent and an order of possession for unpaid rent effective 2 days after service upon the tenants.

Analysis

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a tenant must apply for dispute resolution. If the tenant fails to dispute the notice, then under section 46(5)(a)(b) 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.

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.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

Accordingly I find that the landlord is entitled to a monetary order for \$25,000.00 which is the maximum award that this office is authorized to issue under the *Small Claims Act*.

Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenant(s). This Order must be served on the tenant(s) 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 \$25,000.00 in unpaid rent. I grant the landlord a monetary order under section 67 for the amount of **\$25,000.00**.

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 26, 2012

Residential Tenancy Branch