



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 for Dispute Resolution by the landlords for an order of possession, a monetary order and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing on December 23, 2011, neither tenant appeared. The landlord's agent testified that she served each tenant the hearing documents via personal delivery and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenants' absence.

The landlord's agent appeared, gave affirmed testimony and was provided the opportunity to present her evidence orally and in documentary form, and make submissions to me.

Issue(s) to be Decided

Have the tenants breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlords to an Order of Possession and monetary relief?

Background and Evidence

The landlord's agent testified that this month to month tenancy began on November 1, 2008, monthly rent is \$750.00, and a security deposit of \$375.00 was paid by the tenants on October 10, 2008.

The landlord's agent gave affirmed testimony and supplied evidence that on December 3, 2011, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting on the door. The Notice stated the amount of unpaid rent was \$1,500.00. Documents served in this manner are deemed served three days later under section 90 of the Act. Thus the effective vacancy date of December 13, 2011, listed on the Notice is automatically corrected to December 16, 2011.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

I have no evidence before me that the tenants applied to dispute the Notice. The landlord's agent gave affirmed testimony that the tenants have not made any rent payments since issuance of the Notice and vacated the rental unit on or about January 2, 2012.

The landlord's agent testified that she no longer sought an order of possession, due to the tenants' abandonment of the rental unit.

The landlord's agent stated that the amount of unpaid rent listed on the Notice, \$1,500.00, was actually anticipated loss of revenue for January 2012, in the amount of \$750.00 and unpaid rent for December 2011, of \$750.00.

The landlord's agent stated that the landlords were seeking only a monetary order for unpaid rent for December 2011.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlords have established a total monetary claim of **\$800.00** comprised of outstanding rent of **\$750.00** for December 2011, and the **\$50.00** filing fee paid by the landlords for this application. I have not considered granting the landlords a monetary order for loss of revenue for January 2012, at the landlords' request.

At the landlords' request, I allow the landlords to retain the tenants' security deposit and interest of **\$376.28** in partial satisfaction of the claim and I grant the landlords a monetary order under authority of section 67 of the Act for the balance due of **\$423.72**.

I am enclosing a monetary order for **\$423.72** with the landlords' Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenants fail to comply with this monetary order.

Conclusion

The landlords may keep the tenants' security deposit and interest in partial satisfaction of their monetary claim and are granted a monetary order for **\$423.72**.

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 12, 2012.

Residential Tenancy Branch