



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant's agent.

During the hearing the tenant's agent testified that the respondent KK had vacated the rental unit approximately 3 months ago and that there was a new occupant by the name of Nick living there. As such and with agreement from the landlord's agent, I amended the landlord's Application to exclude tenant KK.

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 tenant 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 February 15, 2011 for a 1 year fixed term tenancy beginning on March 1, 2011 for the monthly rent of \$1,125.00 due on the 1st of each month and a security deposit of \$562.50 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on December 8, 2011 with an effective vacancy date of December 21, 2011 due to \$1,750.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of November and December 2011 and January 2012 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 December 8, 2011 at 2:00 p.m. and that this service was witnessed by a third party.

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. However, the landlord submits the tenants did pay \$1,400.00 on December 15, 2012, with no further payments received.

The landlord seeks a monetary order to include outstanding rent for December 2011 and January 2012 and for future or lost rent for February 2013.

Analysis

I have reviewed all documentary evidence and testimony 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 December 11, 2011 and the effective date of the notice was December 21, 2011. 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.

As to the landlord's claim for rent for the month of February 2012, I note that rent is due, according to the tenancy agreement, on the 1st of each month and since the hearing was held during the day of February 1, 2012, the landlord's Application for rent for February is premature.

Further, as I have found above that the tenancy has ended and the tenants must vacate the rental unit, the landlord may be able to rent the unit out for at least a portion of the month and mitigate any losses prior to making a claim for lost rent.

For the reasons noted above, I dismiss the portion of the landlord's Application claiming for lost rent for February, 2012 with leave to reapply.

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 **\$1,525.00** comprised of \$1,475.00 rent owed and the \$50.00 fee paid by the landlord for this application. I order the landlord may deduct the security deposit and interest held in the amount of \$562.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$962.50**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: February 01, 2012.

Residential Tenancy Branch