



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 the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenants.

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 testified the tenancy was a month to month tenancy beginning on April 1, 2011 for the monthly rent of \$540.00 due on the 1st of each month. While a security deposit was requested the landlord testified that none was paid by the tenant. The tenants assert that they did pay a security deposit.

The landlord provided into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 9, 2012 with an effective vacancy date of January 20, 2012 due to \$520.00 in unpaid rent.

Documentary evidence and testimony filed by the landlord indicates the tenants failed to pay the full rent owed for the months of January and February 2012 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on January 9, 2012. The tenants acknowledge receipt of the 10 Day Notice on January 9, 2012.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants testified that they did pay the rent no later than 4 days after receipt of the notice. The landlord testified the tenants did not pay the rent in full.

The tenants provided no evidence that they paid the rent and testified the landlord did not provide receipts. The landlord testified that she had issued the tenants a 10 Day Notice in December 2011 for which the tenants did eventually pay but that they did not pay rent owing after the January 9, 2012 10 Day Notice was issued.

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. I find it highly unlikely that since the tenants are relying on their assertion that they paid rent after the 10 Day Notice was issued that they would not be able to provide some type of documentary evidence of payment. As such, I prefer the landlord's testimony and I accept 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) to have accepted that the tenancy ended on the effective date of the Notice.

As the landlord testified that she does not hold a security deposit, I find the portion of the landlord's Application seeking to retain the security deposit to be moot and I dismiss this portion of the Application.

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 and I grant a monetary order in the amount of **\$1,090.00** comprised of \$1,040.00 rent owed and the \$50.00 fee paid by the landlord for this application.

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 07, 2012.

Residential Tenancy Branch