



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 one of the landlords and both 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 tenants 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 that on February 2011 the parties began a month to month tenancy for the monthly rent of \$600.00 due on the 1st of each month and a security deposit of \$300.00 was paid.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 20, 2012 with an effective vacancy date of March 20, 2012 due to \$1,075.00 in unpaid rent. The landlord clarified that at the time the Notice was issued the tenants actually owed \$1,800.00 and the amount on the Notice was incorrect.

Testimony provided by the landlord indicates the tenants failed to pay the full rent owed for the months of January, February, March, April and May 2012 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent in person on March 20, 2012.

The male tenant testified that they never did receive a copy of the 10 Day Notice to End Tenancy for Unpaid rent until they received the landlord's hearing package on April 25, 2012. The male tenant stated he did nothing in response to the landlord's application because he could not afford to take care of paperwork such as getting pictures ready.

The tenant wanted to provide pictures to show what they have been asking the landlord to fix since the start of the tenancy which is their justification for why they have not been paying rent; the tenant testified they have not been paying rent since December 2011.

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.

Analysis

From the testimony of both parties I find, based on the landlord's documentary submissions including the 10 Day Notice to End Tenancy; his receipt for filing his Application for Dispute Resolution, that I prefer the landlord's testimony that the tenants were served with the 10 Day Notice on March 20, 2012.

Even if I were to accept the tenant's testimony that he did not receive the Notice until he received the hearing package, the tenants neither paid the rent nor filed an Application for Dispute Resolution seeking to cancel the Notice within 5 days of receiving the hearing package.

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 March 20, 2012 and the effective date of the notice is amended to March 30, 2011, pursuant to Section 53 of the *Act*. 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.

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 **\$3,050.00** comprised of \$3,000.00 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 \$300.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,750.00**.

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: May 15, 2012.

Residential Tenancy Branch