



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Landlord, H.C., said she served the Tenants in person on October 19, 2012 with the Application and Notice of Hearing (the "hearing packages"). Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This tenancy started on August 1, 2011. Rent is \$860.00 per month which is due in advance on the 1st day of each month.

The Landlord, H.C., said the Tenants did not pay rent for October 2012 when it was due and as a result, on October 11, 2012, she served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord, H.C., said the Tenants paid \$740.00 on October 15, 2012 for which they were given a receipt stating that the payment was accepted "for use and occupancy only." The Landlord, H.C., said the Tenants also made a payment of \$860.00 on October 31, 2012 in payment of rent for November 2012 and were given a receipt "for use and occupancy" for this payment as well. The Landlord, H.C., said the Tenants currently have rent arrears of \$120.00 for October 2012. The Landlords also sought to recover a late payment fee of \$20.00 pursuant to a term of the Parties' tenancy agreement to that effect.

Analysis

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 either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a 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 will end on the effective date of the Notice and they must vacate the rental unit at that time.

In the absence of any evidence from the Tenants to the contrary, I find that they were served in person on October 11, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Consequently, the Tenants would have had to pay the amount of the rent arrears stated on the 10 Day Notice in full or apply to dispute that amount no later than October 16, 2012. I find that the Tenants have not paid the overdue rent for October 2012 in full and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenants.

I also find that the Landlords are entitled to recover rent arrears for October 2012 in the amount of \$120.00, a late payment fee of \$20.00 and the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$190.00** have been issued to the Landlords. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: November 26, 2012.

Residential Tenancy Branch