



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 an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of the security and or pet deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates that each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, by registered mail on November 23, 2012. Canada Post receipts were provided in the Landlord's evidence. The Landlord affirmed that both Tenants avoided picking up the hearing documents and they were returned unclaimed. He advised that they have recently checked the rental unit and the Tenants are still occupying it.

Case law provides that avoidance or refusal to accept registered mail does not avoid service. Therefore, based on the submissions of the Landlord I find that each Tenant was sufficiently served notice of this proceeding, in accordance with the Act and I proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a 10 Day Notice to end tenancy dated November 2, 2012 and a tenant ledger.

The Landlord confirmed the parties entered into a fixed term tenancy that began on April 1, 2012 and is scheduled to end on March 31, 2013. Rent is payable on the first of each month in the amount of \$1,160.00 and on March 20, 2012 the Tenants paid \$580.00 as the security deposit.

The Landlord affirmed that when the Tenants failed to pay the November 1, 2012 rent a 10 Day Notice was issued and posted to the Tenants' door on November 2, 2012. The

Landlord stated the Tenants have not paid November, December, or January rent and now have an accumulated balance due of \$3,480.00 (3 x \$1,160.00).

The Landlord seeks to regain possession of the unit as soon as possible and to obtain a Monetary Order for the three months of past due rent.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants are deemed to have received the 10 Day Notice on November 5, 2012, three days after it was posted to the door, and the effective date of the Notice is November 15, 2012. The Tenants neither paid the rent nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **November 15, 2012**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$1,160.00 that was due November 1, 2012, in accordance with section 26 of the *Act* which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord November 1, 2012 rent in the amount of **\$1,160.00**.

As noted above this tenancy ended **November 15, 2012**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for December and January 2012.

The Tenants have had possession of the rental unit for the entire month of December 2012; therefore, the Landlord is entitled to payment for use and occupancy for the entire month of December, 2012, in the amount of **\$1,160.00**.

The Landlord will not regain possession of the unit until after service of the Order of Possession. The Landlord has the obligation to attempt to re-rent the unit as soon as possible; therefore I award the Landlord **\$580.00** (1/2 of \$1,160.00) for use and occupancy of the unit up to **January 15, 2013**. The Landlord is at liberty to claim for any additional losses they may suffer as a result of this tenancy.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

November 1, 2012 Rent	\$1,160.00
Use & Occupancy for December, 2012	1,160.00
Use & Occupancy up to January 15, 2013	580.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,950.00
LESS: Security Deposit \$580.00 + Interest 0.00	<u>-580.00</u>
Offset amount due to the Landlord	<u>\$2,370.00</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenants**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$2,370.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and 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: January 03, 2013.

Residential Tenancy Branch