



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 under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenants' security deposit and to recover the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

No party raised any issue regarding service of the evidence or the application.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order and to recover the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on August 1, 2012, monthly rent is \$1200.00, and a security deposit of \$600.00 was paid by the tenants at the beginning of the tenancy.

The landlord gave undisputed evidence that on December 5, 2012, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on the tenants' door, listing unpaid rent of \$1200.00 as of December 1, 2012. The effective vacancy date listed on the Notice was December 15, 2012.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenants were deemed to have received the Notice on December 8, 2012, and the effective move out date is automatically changed to December 18, 2012.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

The landlord stated that the tenants had not made any further rent payments and as of the date of the hearing, the tenants owed \$2400.00 in unpaid rent.

The tenants acknowledged receipt of the Notice, that this amount was owed and that they did not file an application for dispute resolution; however, the tenants submitted that job loss contributed to the non-payments and requested to work out a payment plan with the landlord.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or apply to dispute the Notice within five days of service and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenants.

I also find that the landlord has established a total monetary claim of \$2450.00 comprised of outstanding rent of \$2400.00 through January 2013, and the \$50.00 filing fee paid by the landlord for this application.

Conclusion

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$600.00 in partial satisfaction of their monetary claim.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$1850.00, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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* and is being mailed to both the applicant and the respondents.

Dated: January 24, 2013



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca