



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPR, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss, unpaid rent and damage to the rental unit, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The landlord appeared; the tenants did not appear at the telephone conference call hearing.

The landlord gave evidence that they served each tenant separately with the Application for Dispute Resolution and Notice of Hearing by registered mail to the tenants' residential address on December 27, 2012. The landlord supplied the receipts and proof of the tracking number of the registered mail envelopes.

I find the tenants were served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her 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 landlord gave evidence that this one year, fixed term tenancy began on October 1, 2012, monthly rent is \$995.00, and a security deposit of \$497.50.00 was paid by the tenants at the beginning of the tenancy.

The landlord gave evidence that on December 7, 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 \$990.00 as of December 1, 2012. The effective vacancy date listed on the Notice was December 17, 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 10, 2012, and the effective move out date is automatically changed to December 20, 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 have not made any rent payments since issuance of the Notice and as of the date of the hearing, the tenants owed \$1985.00 in unpaid rent. Additionally the landlord is requesting a late fee of \$25.00 for both December 2012 and January 2013, as agreed upon in the tenancy agreement.

I have no evidence before me that the tenants applied to dispute the Notice.

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 \$2085.00 comprised of outstanding rent of \$1985.00 through January, 2013, late fees of \$50.00 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 for the rental unit, 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 \$497.50 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 \$1587.50, 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

