



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPC, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee. Both parties attended and / or were represented at the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on December 1, 2012. Monthly rent of \$995.00 is due and payable in advance on the first day of each month, and a security deposit of \$500.00 was collected.

The landlord issued a 1 month notice to end tenancy for cause dated December 30, 2012. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is February 1, 2013. Reasons shown on the notice for its issuance are as follows:

Tenant is repeatedly late paying rent.

Tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Thereafter, arising from rent which remained unpaid in full when due on January 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 2, 2013. The landlord testified that the notice was served by way of posting on the tenants' door on that same date, while the tenant at the hearing ("SD") testified that the notice was served before January 1, 2013. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is January 12, 2013. There is no dispute that the tenants have made no payment toward rent for either January or February 2013, and they continue to reside in the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated January 2, 2013. I prefer the evidence of the landlord that the notice was served by way of posting on the tenants' door on January 2, 2013, as opposed to tenant "SD's" evidence that the notice was served before January 1, 2013. As tenant "SD" acknowledges that no rent has been paid for either January or February 2013, on a balance of probabilities I find the landlord's evidence to be more credible.

The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenants are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an **order of possession**.

As for compensation, I find that the landlord has established a claim of **\$2,040.00**, which is comprised as follows:

\$995.00: *unpaid rent for January 2013*

\$995.00: *unpaid rent for February 2013*

\$50.00: *filing fee*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part as follows:

72(2) If the director orders a party to a dispute resolution to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all the above, I order that the landlord retain the security deposit of **\$500.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$1,540.00** (\$2,040.00 - \$500.00).

Pursuant to the circumstances set out above, I find there is no requirement that I consider any of the matters related to the landlord's issuance of the 1 month notice to end tenancy for cause.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,540.00**. Should it be necessary, this order may be served on the tenants, filed in the 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: February 12, 2013

Residential Tenancy Branch

