



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD 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; to keep the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The Agent affirmed that each Tenant was served copies of their application for dispute resolution and notice of hearing documents in person on January 20, 2013 and by registered mail on January 18, 2013. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find that each Tenant has been sufficiently served notice of this proceeding, in accordance with the Act, so I continued in the Tenants' absence.

Issue(s) to be Decided

1. Has the Landlord regained possession of the rental property?
2. Should the Landlord be issued a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: written statements; the tenancy agreement; the move in condition inspection report form; returned cheques issued by the Tenants; a 10 Day Notice to end tenancy; and a proof of service document.

The Tenants did not submit documentary evidence despite being properly served notice of this proceeding.

The Agent confirmed that the parties entered into a fixed term tenancy agreement that began on November 1, 2012 and was set to end on October 31, 2013. Rent was payable on the first of each month in the amount of \$1,500.00 and on October 31, 2012 the Tenants paid \$750.00 as the security deposit. A move in condition inspection report form was completed on October 28, 2012.

The Agent advised that when the Tenants failed to pay the January 1, 2013 rent on time a 10 Day Notice for unpaid rent was personally served to Tenant U.I. on January 11,

2013. The Tenants vacated the unit on January 21, 2013 and have not provided the Landlord with a forwarding address. The Landlord has regained possession of the rental unit so they are withdrawing their request for an Order of Possession. The Agent advised they are seeking a monetary order for January 2013 rent as well as February rent.

Analysis

The Landlord has made application requesting a Monetary Order for unpaid rent and to keep the security deposit.

The Tenants did not pay January 1, 2013 rent which is a breach of section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Therefore, I award the Landlord a Monetary Order for January 2013 unpaid rent in the amount of **\$1,500.00**.

The Landlord has claimed unpaid rent for February 1, 2013; however, in this case the tenancy ended on January 21, 2013, in accordance with the 10 Day Notice. Therefore, the Landlord is not entitled to rent for February 2013; rather, they may however be entitled to compensation for loss of rent or loss of revenue for February. That being said the Landlord has the obligation to mitigate their loss and attempt to re-rent the unit as quickly as possible. Accordingly, I dismiss the Landlord's claim for February unpaid rent with leave to reapply for loss of rent/revenue.

The Landlord has primarily been successful with their application; therefore, I award recovery of their **\$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:

Unpaid January 2013 Rent	\$1,500.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,550.00
LESS: Security Deposit \$750.00 + Interest 0.00	<u>-750.00</u>
Offset amount due to the Landlord	<u>\$ 800.00</u>

Conclusion

The Landlord withdrew their request for an Order of Possession.

The Landlord has been awarded a Monetary Order in the amount of **\$800.00**. 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: February 14, 2013

Residential Tenancy Branch

