



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 filed on March 5, 2013 by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent and utilities; to keep all or part of the pet and or security deposit; and to recover the cost of the filing fee for this application.

The Landlord affirmed that each Tenant was personally served copies of the application for dispute resolution and notice of hearing documents on March 5, 2013. Based on the submissions of Landlord I find that each Tenant was sufficiently served notice of this proceeding and I continued in the Tenants' absence.

Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord testified that the Tenants entered into a one year fixed term tenancy agreement that began on January 2009 and switched to a month to month tenancy after December 31, 2009. Rent is payable on the first of each month in the amount of \$1,200.00 and on approximately January 1, 2009 the Tenants paid \$625.00 as the security deposit.

The Landlord submitted documentary evidence which included a copy of a 10 Day Notice to end tenancy for unpaid rent that was issued on February 25, 2013. The Landlord personally served the male Tenant with the 10 Day Notice on February 25, 2013 and the Tenant signed the Landlord's copy as acknowledgement of receipt.

The Landlord is seeking an Order of Possession and a Monetary Order for the outstanding balance owing of \$590.00 for February rent plus \$1,200.00 for March 2013 rent.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their evidence.

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 received the 10 Day Notice on February 25, 2013, and the effective date of the Notice is **March 7, 2013**, in accordance with section 90 of the Act. The Tenants did not pay the rent and did not dispute the Notice, therefore, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice 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 \$1,790.00 which consists of \$590.00 owing from February 1, 2013 plus \$1,200.00 that was due for March 1, 2013. The Tenants failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$1,790.00**.

The Landlord has also claimed for unpaid utilities for hydro and natural gas for February and March 2013 in the amount of \$410.51. The Landlord did not submit copies of the utilities bills; therefore, I find there to be insufficient evidence to support the claim for utilities and it is hereby dismissed, without leave to reapply.

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 Tenant's security deposit plus interest as follows:

Unpaid rent	\$1,790.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,840.00
LESS: Security Deposit \$625.00 + Interest 0.00	<u>-625.00</u>
Offset amount due the Landlord	<u>\$1,215.00</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two Days upon service**. 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 in the amount of **\$1,215.00**. 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: March 28, 2013

Residential Tenancy Branch

