



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 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, for authority to retain the tenants' security deposit and to recover the filing fee.

The landlords (hereafter referred to in the singular, landlord) and their translator appeared; the tenants did not appear.

The landlord gave evidence that they served each tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on July 18, 2013. The landlord supplied testimony of the tracking numbers of each 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 their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); 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 tenancy began on December 1, 2010, monthly rent is \$1400, and a security deposit of \$700 was paid by the tenants at the beginning of the tenancy.

The landlord gave evidence that on July 4, 2013, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated June 24, 2013, by leaving it with the tenants, listing unpaid rent of \$4900 as of June 1, 2013. The effective vacancy date listed on the Notice was July 4, 2013.

As the landlord did not serve the Notice to the tenants until the effective move-out date, Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to July 14 2013.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenants did not make any further payments of rent and as of the date of the hearing, the tenants owed \$6300 in unpaid rent.

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 the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or file an application for dispute resolution in dispute of 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 \$6350 comprised of outstanding rent of \$6300 through August, 2013, and the \$50 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 after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$700 in partial satisfaction of the 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 \$5650, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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: August 20, 2013

Residential Tenancy Branch

