



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A partial copy of a residential tenancy agreement which was signed by the parties on April 25, 2013 for a 1 year and 1 day fixed term tenancy beginning on April 25, 2013 for the monthly rent of \$2,200.00 due on the 25th day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 16, 2013 with an effective vacancy date of July 26, 2013 due to \$2,200.00 in unpaid rent.

The landlords testified the tenants failed to pay the full rent owed for the month of July 2013 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally to both the tenants on July 16, 2013. The landlord submits the tenants did pay \$500.00 towards July 2013 rent on July 15, 2013 but that the tenants have not paid any rent since, including August 2013 rent.

Initially the tenants testified that they had not received the 10 Day Notice to End Tenancy, however they later changed their testimony to say that they had received it in accordance with the landlords' testimony.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The tenants submit that they are close to completing several real estate deals and that once they have completed they will be able to pay the landlords the arrears and the upcoming rent due on September 25, 2013. The tenants testified that they had offered to the landlords, this past week, to use their van as collateral and that the van is worth \$10,000.00.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice was received by the tenants on July 16, 2013 and the effective date of the notice was July 26, 2013. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find, despite the tenants recent offer of collateral and payment by September 25, 2013, the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$3,950.00** comprised of \$3,900.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 12, 2013

Residential Tenancy Branch

