



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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 and money owed or compensation for damage or loss, and to recover the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties were 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 Dispute Resolution 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 undisputed evidence shows that this tenancy began on August 1, 2010, monthly rent started at \$1200, it then was increased to \$1225, and current monthly rent as of August 2013, is \$1272. The tenants paid a security deposit of \$600 at the beginning of the tenancy.

The landlord gave evidence that on July 22, 2013, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by attaching it to the

tenants' door, listing unpaid rent of \$1225 as of July 1, 2013. The effective vacancy date listed on the Notice was July 31, 2013.

Section 90 of the Act states that documents served by attaching it to a door are deemed delivered three days later. Thus the tenants were deemed to have received the Notice on July 25, 2013, and the effective move out date is automatically changed to August 4, 2013, pursuant to section 53 of the Act.

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 have not made any payments of rent and as of the day of the hearing, owed unpaid rent in the amount of \$5041, through October 2013.

The tenants acknowledged that the monthly rent has not been paid as required, due to a serious personal injury suffered, and having no benefits. The tenant requested to be allowed to stay, as he was anticipating being able to return to work shortly, and would be able to secure the entire amount owed.

The tenant further informed me that the landlords have been extremely helpful and patient in working with him during this difficult time.

The tenant stated that he had paid the amount of \$200 toward the overdue rent, the week prior to the hearing.

The landlord acknowledged receiving the cheque and that it has not been returned to them.

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 is entitled to a monetary award in the amount of \$4891, comprised of unpaid rent of \$4841, through October 2, 2013, giving credit of \$200 to the tenants for the rent paid previously, 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.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$4891, 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: October 02, 2013