



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, 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 damage to the rental unit, and to recover the filing fee.

The landlord attended the telephone conference call hearing; the tenants did not attend.

The landlord gave evidence that she served each tenant with the Application for Dispute Resolution and Notice of Hearing by leaving it with the tenants on October 18, 2013.

Based upon the submissions of the landlord, 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 her 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 landlord gave evidence that she did not believe a tenancy existed in this situation, explaining that she allowed her son and his partner, the two listed tenants here, to move into the upper floor of the rental unit for the month of September only, which had a

bedroom, living room, kitchen and bathroom facilities, while the landlord renovated the lower level, which contained only bedrooms.

The landlord testified that she explained to the tenants that rent for September would be \$800, as they were to just live in the upper level and only for that month. The landlord said that the tenants refused to vacate at the end of September and refused to pay rent for October, forcing her to serve the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

The landlord gave evidence that on October 8, 2013, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenants, listing unpaid rent of \$1550 as of October 1, 2013. The effective vacancy date listed on the Notice was October 18, 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 have not made any further payments of rent and refuse to move out. The landlord explained that she listed the amount of \$1550 on the Notice as this is the standard monthly rent she charges for the entire suite, upper and lower levels and the tenants have full control over the two levels. The landlord submitted that the tenants owe the amount of \$3100 for unpaid rent for October and November, which is the amount of her monetary claim.

I have no evidence before me that the tenants applied to dispute the Notice.

Analysis

As to whether or not there was a tenancy, I find that when the landlord, who owned the residential property, allowed the tenants to occupy the rental unit while accepting rent, a month to month tenancy was created.

As to the landlord's application, 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.

As to the landlord's monetary claim, I find the parties agreed to a monthly rent of \$800 and as such, I decline to award her monetary compensation of \$1550 per month. I do,

however, find the landlord is entitled to monetary compensation of \$1600, comprised of unpaid rent of \$800 for October and November each.

I therefore find that the landlord is entitled to total monetary compensation of \$1650, comprised of outstanding rent of \$1600 through November, 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.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1650, 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: December 02, 2013

Residential Tenancy Branch

