



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAVID BURR LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 21, 2013, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted documentary evidence which indicates each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on November 22, 2013, by registered mail, and each package was signed received on November 25, 2013. Canada Post tracking information was provided in the Landlord's testimony. Based on the submissions of the Landlord I find each Tenant was sufficiently served notice of this proceeding as of November 25, 2013, in accordance with the Act. Therefore, I proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a fixed term tenancy that began on September 1, 2013 and is scheduled to switch to a month to month tenancy after August 31, 2014. Rent is payable on or before the first of each month in the amount of \$1,600.00 and on August 28, 2013, the Tenants paid \$800.00 as the security deposit.

The Landlord testified that when the Tenants fell behind in their rent a 10 Day Notice was issued and personally served to the Tenants on November 7, 2013. The Tenants failed to pay the full amount due and a second 10 Day Notice was issued December 19, 2013 and posted to the Tenants' door. The Landlord stated that the Tenants have been making payments through out and as of today's date they have an outstanding balance owing of \$160.00. He is seeking the Monetary Order for only the outstanding rent for use and occupancy and the Order of Possession which he will serve upon the Tenants if they fail to catch up outstanding amounts by February 1, 2014.

Analysis

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 November 7, 2013; therefore, the effective date of the Notice is November 17, 2013.

The Tenants have been making payments towards the outstanding amounts, however they have not paid the amount due in full; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **November 17, 2013**, 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.

As noted above this tenancy ended **November 17, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for the accumulated balance as of January 16, 2014.

The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire month of January, 2014, in the amount of **\$160.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenants**. 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 for **\$210.00** (\$160.00 + \$50.00). 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: January 16, 2014

Residential Tenancy Branch

