



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 an Application for Dispute Resolution filed on December 30, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent and to recover the cost of the filing fee from the Tenants for this application.

The Landlord testified that 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 December 31, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find that each Tenant is deemed served notice of this proceeding on January 5, 2014, five days after it was mailed, in accordance with section 90 of the Act and I proceeded in the absence of the Tenants.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?
2. Is the Landlord entitled to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord provided undisputed evidence that the parties executed a written tenancy agreement for a month to month tenancy that commenced on September 1, 2011. The Tenants are required to pay rent of \$1,100.00 on the first of each month and on August 22, 2011 the Tenants paid \$550.00 as the security deposit.

The Landlord testified that when the Tenants failed to pay November 2013 rent they had agreed to pay for both November and December 2013 rent on the first of December. When he attempted to pick up the rent on December 1, 2013 the Tenants refused to answer the door so he posted a 10 Day Notice to their door on December 3, 2013 seeking the \$2,200.00 in unpaid rent. The Landlord stated that the Tenants continue to reside in the rental unit and now owe him for four months rent. He is seeking possession for as soon as possible and the monetary order as claimed.

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, pursuant to section 46 of the Act.

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 is deemed to have been received by the Tenants on December 6, 2013, three days after it was posted to the Tenants' door, and the effective date of the notice is December 16, 2013, pursuant to section 90 of the Act. I accept the evidence before me that the Tenants have 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 that 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 and I hereby grant the Landlord an Order of Possession.

The evidence supports that the Tenants have failed to pay the November and December, 2013, rent in violation of section 26 of the Act which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order for **\$2,200.00** (2 x \$1,100.00).

The Landlord has been successful 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 that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlord has been awarded a Monetary Order in the amount of **\$2,250.00** (\$2,200.00 + \$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: February 14, 2014

Residential Tenancy Branch