



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, for authority to retain the tenants' security deposit, and to recover the filing fee.

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

The landlord stated that he served each tenant with his Application for Dispute Resolution and Notice of Hearing by leaving it with the tenants on March 1, 2014.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present his 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, monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this tenancy began on in January 2013, monthly rent is \$1100, and a security deposit of \$550 was paid by the tenants at the beginning of the tenancy.

The landlord supplied a handwritten tenancy agreement which was largely indecipherable as to all the appropriate parties and terms; however, I was able to determine that the above listed respondents did sign the long document.

The landlord gave evidence that on February 2, 2014, 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 \$955 as of February 1, 2014. The effective vacancy date listed on the Notice was February 12, 2014.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenants were deemed to have received the Notice on February 5, 2013, and the effective move out date is automatically changed to February 15, 2013, pursuant to section 53 of the Act.

The landlord supplied a copy of the Notice.

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 made rent payments totalling \$1100 since the Notice was issued and still owed the amount listed on the Notice, \$955. In explanation of the amount claimed, the landlord testified that the tenants owed \$300 for December 2013, \$300 for January and \$300 for February 2014, plus \$55 for a filing fee of some sort.

The landlord testified that the tenants remain in the rental unit.

I note that the landlord's monetary claim was \$2055, without an explanation either at the hearing or in his application as to the breakdown of his claim.

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

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

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 of \$950 comprised of outstanding rent of \$900 through February, 2014, and the \$50 filing fee paid by the landlord for this application. I have not awarded the landlord the additional \$55 listed on the Notice due to the lack of explanation that this amount was unpaid rent.

Conclusion

The landlord's application has been granted.

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.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$550 in partial satisfaction of his monetary award of \$950.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$400, 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.

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: March 25, 2014

Residential Tenancy Branch

