



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353806 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

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

The landlord and tenant JL attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue regarding service of the evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, 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.

Preliminary matter-The landlord testified that he served each tenant with the Application for Dispute Resolution and Notice of Hearing by leaving the documents with both tenants on January 20, 2014.

Based upon the landlord's submissions, 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 against the non-attending tenant as well.

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 May 4, 2013, monthly rent is \$800, and a security deposit and pet damage deposit of \$400 each was paid by the tenants at the beginning of the tenancy.

The landlord gave evidence that on January 10, 2014, 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 \$4401 as of January 1, 2014. The effective vacancy date listed on the Notice was January 20, 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 submitted that the tenants have not made any rent payments since the Notice was issued to them, and as of the date of the hearing, the tenants owed another two months of rent for February and March, for a total of \$6001 in unpaid rent through March 2014.

The tenant acknowledged owing this amount; however, the tenant further stated that he has been laid off from work and has been unable to pay.

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 is 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 \$5651 comprised of outstanding rent of \$5601 *through March 15, 2014*, and the \$50 filing fee paid by the landlord for this application.

I have not awarded the landlord the other half of the monthly rent owed for March, or \$400, as the landlord is being issued an order of possession for the rental unit and, due to the hearing date in early March, the landlord could secure another tenant for the last half of the month.

If the landlord fails to secure another tenant for the last half of March, the landlord is at liberty to reapply for loss of rent revenue for that time period.

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 \$400 and pet damage deposit of \$400 in partial satisfaction of their monetary award of \$5651.

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 \$4851, 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: March 05, 2014

Residential Tenancy Branch

