



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement for this tenancy which began on October 01, 2014. The parties verbally agreed that monthly rent of \$1,400.00 is due and payable in advance on the first day of each month. Neither a security deposit nor a pet damage deposit was collected.

As to October's rent, the landlord received a payment of \$700.00 on or about October 05, and a payment of \$350.00 on or about October 08 [total received: \$1,050.00]. Arising from the balance of \$350.00 which remained overdue, the landlord issued a 10 day notice to end tenancy for unpaid rent dated October 12, 2014. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is October 23, 2014. Subsequently, the tenants paid the outstanding balance of \$350.00. The landlord issued a receipt dated October 27, 2014 documenting that the full amount of October's rent of \$1,400.00 had been paid, and the receipt bears the manual notation: "use and occupancy only."

November's rent has been paid in full. A receipt issued by the landlord in exchange for this payment is dated November 11, 2014 and it bears the manual notation: "for use & occupancy." The tenants continue to reside in the unit, however, the landlord confirmed

that she seeks an order of possession, recovery of the filing fee, and recovery of an NSF fee assessed by her bank.

During the hearing the parties undertook to resolve the dispute.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

Based on the documentary evidence and testimony, I find that the tenants were personally served with a 10 day notice to end tenancy for unpaid rent dated October 12, 2014. The tenants did not pay the full amount of overdue rent within 5 days of receiving the notice; the fifth day was October 17, 2014. Rather, according to the receipt issued by the landlord, the tenants paid the balance of overdue rent on October 27, 2014. Further, the tenants did not apply to dispute the notice. In the result, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the tenants will pay the full amount of rent due for December in the amount of **\$1,400.00**, by no later than **midnight, December 01, 2014**;
- that in the event the tenants fail to comply with the above aspect of the agreement, the landlord has the option of serving them with an **order of possession** effective not later than **two (2) days** after service;
- that in any event, an **order of possession** will be issued in favour of the landlord effective not later than **December 31, 2014**;
- that the tenants agree to reimburse the landlord's **\$50.00** filing fee and a **\$7.00** NSF fee [total: \$57.00] by not later than midnight, **December 01, 2014**, and that a **monetary order** will be issued in favour of the landlord to that effect.

Should the tenants continue to reside in the unit after November 30, 2014, but fail to pay December's rent on December 01, 2014 as agreed, and the landlord then serves the two (2) day order of possession, the landlord has the option of later filing another application for dispute resolution, pursuant to which she seeks a monetary order as compensation for unpaid rent for December 2014.

The landlord's application to recover the filing fee for a cancelled hearing scheduled for separate file # 827847 is dismissed, as that is a different matter which is not before me.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

In the alternative to the above, I hereby issue an **order of possession** in favour of the landlord effective not later than **December 31, 2014**. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As to the landlord's recovery of the filing fee and the NSF fee, pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$57.00** (\$50.00 + \$7.00). Should it be necessary, this order may be served on the tenants, filed in the 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: November 26, 2014

Residential Tenancy Branch

