



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, FF
Tenant: MT, CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought more time to apply to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on November 14, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by each tenant on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

In addition, I note that the tenants had submitted their own Application for Dispute Resolution seeking to cancel the subject notice to end tenancy and would have been well aware of this hearing date, time and call in procedures.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to more time to apply to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 and 66 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on February 27, 2014 for a 1 year fixed term tenancy beginning on March 7, 2014 for the monthly rent of \$1,000.00 due on the 1st of each month and a security deposit of \$500.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 5, 2014 with an effective vacancy date of November 15, 2014 due to \$1,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of November 2014 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally to the female tenant on November 5, 2014 at 5:30 p.m.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full but did apply to dispute the Notice to End Tenancy within five days. The landlord testified the tenants have also not paid rent for the month of December 2014.

Analysis

As the tenants have failed to attend this hearing I dismiss their Application for Dispute Resolution in its entirety without leave to reapply.

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 November 5, 2014 and the effective date of the notice was November 15, 2014. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

While the tenants did submit an Application for Dispute Resolution seeking more time to apply to cancel the Notice and to cancel the Notice I find failing to attend this hearing has the same effect as the tenants not filing an Application at all.

Based on the foregoing, I find 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.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply

with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,050.00** comprised of \$2,000.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 12, 2014

Residential Tenancy Branch

