



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

...Lost rent for January of \$1500 because tenant has not left.

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for lost rent or for use occupancy after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 30, 2014, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord who provided affirmed testimony and documentary evidence that the Tenant was served notice of this application and this hearing by registered mail on January 2, 2015. Canada Post tracking information confirms that the Tenant signed for the registered mail on January 6, 2015. Based on the foregoing, I find the Tenant was sufficiently served notice of this proceeding, in accordance with section 89 of the Act. Accordingly, I proceeded in the absence of the Tenant.

Issue(s) to be Decided

1. Have the Landlords regain Possession of the rental unit?
2. Have the Landlords proven entitlement to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a 1 year fixed term tenancy that began on October 1, 2014. Rent of \$1,500.00 was due on or before the first of each month and on October 1, 2014 the Tenant paid \$500.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay their December 1, 2014 rent the Landlord served a 10 Day Notice on December 15, 2014. The Landlord stated that the Tenants vacated the property on January 9, 2015, without paying the past due rent. The Landlord stated that he regained possession and has started looking for new tenants.

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.

In this case the Tenant received the 10 Day Notice on December 15, 2014, and the effective date of the Notice was **December 25, 2014**, pursuant to section 46 of the Act.

The Tenant did not pay the outstanding rent and vacated the property on January 9, 2015. The Landlord claimed unpaid rent of \$1,500.00 that was due December 1, 2014, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent for December 1, 2014, in the amount of **\$1,500.00**.

As noted above this tenancy ended **December 25, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy and loss of rent, not rent for January 2015. The Landlord did not regain possession of the unit until after January 9, 2015 and had to ready the unit and is now search to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire month of January 2015, in the amount of **\$1,500.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord withdrew his request for an Order of Possession as he regained possession on January 9, 2015 when the Tenant moved out.

The Landlord has been awarded a Monetary Order for **\$3,050.00** (\$1,500.00 + \$1,500.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does 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: January 23, 2015

Residential Tenancy Branch

