



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 an Application for Dispute Resolution filed by the Landlord initially on January 22, 2015 through the Direct Request Process. The Landlord amended his application and filed for Dispute Resolution on January 29, 2015, to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony that he personally served each Tenant with notice of this application and this hearing on January 30, 2015. A written response from one of the Tenants was submitted into evidence on February 4, 2015. Based on the foregoing, I find the Tenants were sufficiently served notice of this application and proceeding and I continued in the Tenants' absence.

Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?
2. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord testified that the Tenants wrote their names on the tenancy agreement but did not sign it so he continued the tenancy on a verbal tenancy agreement. The tenancy was a month to month tenancy that began on September 1, 2014. Rent of \$1,200.00 was due on or before the first of each month and on September 1, 2014 the Tenants paid \$600.00 as the security deposit.

The Landlord testified that when the Tenants failed to pay \$200.00 from December 2014 and failed to pay the \$1,200.00 owed for January 2015 rent the Landlord personally served the Tenants a 10 Day Notice to end tenancy on January 17, 2015.

The Tenants move out of the rental unit on January 31, 2015 and returned the keys to the Landlord. Therefore, the Landlord was withdrawing his request for an Order of Possession and was seeking the monetary order for the unpaid rent.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

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 Tenants received the 10 Day Notice on January 17, 2015; the effective date of the Notice was January 27, 2015; and the Tenants vacated the unit on January 31, 2015.

The Tenants neither paid the rent nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 27, 2015**.

The Landlord claimed accumulated unpaid rent of \$1,400.00 that was due January 1, 2015, 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 accumulated unpaid rent up to the end of January 2015 in the amount of **\$1,400.00** (\$200.00 Dec. + \$1,200.00 Jan).

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants’ security deposit plus interest as follows:

Accumulated Unpaid Rent	\$1,400.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,450.00
LESS: Security Deposit \$600.00 + Interest 0.00	<u>-600.00</u>
Offset amount due to the Landlord	<u>\$ 850.00</u>

Conclusion

The Landlord withdrew his request for an Order of Possession.

The Landlord has been awarded a Monetary Order for **\$850.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do 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: February 20, 2015

Residential Tenancy Branch

