



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, and for a monetary order for unpaid rent or utilities.

The landlord, the daughter and agent for the landlord, and the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenants confirmed that they received the landlord's Application and documentary evidence and had the opportunity to review the documents prior to the hearing. The tenants confirmed that they did not submit documentary evidence in response to the landlord's application. I find the tenants were served in accordance with the *Act* and Rules of Procedure.

Preliminary and Procedural Matters

The agent testified that in addition to the rent owed as claimed, the tenants have subsequently not paid the rent for November and December of 2015 which the tenants confirmed during the hearing. As a result, the agent requested to amend the application to include rent owed for the months of November and December of 2015. The tenants confirmed that they continue to occupy the rental unit. I find that amending the landlord's application does not prejudice the respondent tenants as the tenants would be aware that rent is due pursuant to the tenancy agreement. Therefore, pursuant to section 64(3) of the *Act*, I amend the application from \$3,500 in unpaid rent to \$5,100 in unpaid rent and loss of rent.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the *Act*, and if so, in what amount?

Background and Evidence

The parties agreed that a month to month tenancy began on February 15, 2015 and that monthly rent in the amount of \$800 was due on the first day of each month.

The landlord testified that she served a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated October 6, 2015 on the tenant G.D. on October 6, 2015 which tenant G.D. did not deny. The tenants testified that they did not submit an application to dispute the 10 Day Notice which indicated that \$3,500 in rent was owed as of October 1, 2015. There is no effective date listed on the 10 Day Notice.

The tenants confirmed that they have not paid any rent since they were served with the 10 Day Notice, and provided no documentary evidence such as bank statements or other documents to support that any rent was paid in relation to the landlord's monetary claim.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

The tenants confirmed during the hearing that they have not paid rent since they were served the 10 Day Notice and failed to submit any documentary evidence such as bank statements or any other documents to support that they paid any of the unpaid rent being claimed by the landlord. As a result, I find the tenants have provided insufficient evidence to prove that rent was paid, and as a result, I prefer the testimony of the agent and landlord that rent has not been paid as claimed.

Although the 10 Day Notice does not include an effective vacancy date, pursuant to sections 53 and 68 of the *Act*, I find that the tenants would know or ought to have known that a 10 Day Notice becomes effective 10 days after they were served with the 10 Day Notice on October 6, 2015, which would make the effective vacancy date October 16,

2015. Given the above, I find that the 10 Day Notice dated October 6, 2015, is valid and **I uphold** the 10 Day Notice.

Order of Possession – The effective vacancy date of the 10 Day Notice has been amended to October 16, 2015 which has passed and the tenants continue to occupy the rental unit. The landlord has applied for an order of possession and section 46 of the *Act* states that if the tenants fail to dispute a 10 Day Notice within 5 days of being served with the 10 Day Notice, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice, which in the matter before me has been amended to October 16, 2015. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants.

Claim for unpaid rent – I find that rent of \$5,100 remains owing, comprised of \$300 owing for June 2015, and \$800 for the months of July, August, September and October of 2015 inclusive, plus loss of rent of \$800 for the months of November and December of 2015 inclusive. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and **I find** the landlord has established a monetary claim of **\$5,100** as claimed.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of their **\$50** filing fee pursuant to section 72 of the *Act*.

Monetary Order – **I find** the landlord has established a total monetary claim of **\$5,150**, comprised of \$5,100 in unpaid rent and loss of rent, plus the recovery of the \$50 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of **\$5,150**.

Conclusion

The landlord's application is successful.

The landlord has been granted a two (2) day order of possession which must be served on the tenants. Should the landlord require enforcement of the order of possession, the landlord must first serve the tenants with the order of possession and may file the order of possession in the Supreme Court of British Columbia to be enforced as an order of that Court.

The landlord has established a total monetary claim of \$5,150 described above. The landlord has been granted a monetary order under section 67 in the amount of \$5,150. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 3, 2015

Residential Tenancy Branch

