



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, damage to the rental unit, damage or loss under the Act, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided stated that on November 3, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number and copies of the receipts were provided as evidence of service for each tenant.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenants did not appear at the hearing.

Preliminary Matters

As the tenants apparently remain in the unit the landlord withdrew the portion of the application for damage or loss and damage to the rental unit.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 7, 2010, rent was \$1,143.00 due on the first day of each month. On July 26k, 2010, a deposit in the sum of \$571.50 was paid.

The landlord stated that on October 4, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of October 17, 2010 was served by posting to the rental unit door. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,716.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants are presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

On October 8, 2010, the tenants made 2 payments totaling the sum of \$1,030.00 toward September and October rent owed. A payment in the sum of \$650.00 was made on November 1, 2010. Copies of the receipts issued for use and occupancy only were provided as evidence.

The landlord stated that the tenants currently owe rent in the sum of \$1,143.00 for each of December and November and \$36.00 for October arrears.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on October 7, 2010.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on October 17, 2010, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenants exercised either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$2,322.00 for October to December, 2010, inclusive, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$571.50, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$2,372.00, which is comprised of \$2,322.00 in unpaid October to December, 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$571.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,800.50**. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: December 14, 2010.
