



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. The hearing was conducted by conference call. The landlord's agent and the named tenant participated in the hearing. The tenants were served with the application for dispute resolution and Notice of Hearing by Registered mail sent on December 31, 2010.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is a half duplex in Burnaby. The tenancy began on July 1, 2010. Monthly rent was \$1,300.00. The tenants paid a security deposit of \$650.00 on June 22, 2010. The landlord's representative testified that the tenants were to pay rent by direct deposit to the landlord's bank account, but no direct deposits were ever made and no rent has been received by the landlord since the tenancy began. The landlord's representative testified that the landlord is his father. He is 80 years old. The landlord told him that he was having difficulty with his tenants who were not paying rent and asked him to look after managing the rental property. The landlord's representative attempted to contact the tenants on several occasions without a response. He served a

10 day Notice to End Tenancy for unpaid rent on December 19, 2010 by posting it to the door of the rental unit on December 19, 2010.

At the hearing the tenant testified that the tenants recently moved out of the rental unit. She said that the tenants paid the landlord rent for the months of July and August in cash and she acknowledged that no rent was paid for any subsequent month.

According to the tenant she made arrangements for rent to be directly deposited to the landlord's bank account, but the deposits for July and August were reversed and the tenants went to the landlord's house and paid him cash in July and in August. She said that the landlord did not give them a receipt for the rent payments. She testified that the August payment was put under the landlord's door and he later acknowledged receiving it by telephone.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession – The tenants did not give the landlord notice that they have moved out of the rental unit and the landlord has not confirmed that they have in fact moved out. Based on the evidence presented I find that the landlord is entitled to an order of possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit – The landlord' representative did not provide any documents or bank records to show that no rental payments were received by the landlord. On the evidence presented I find on a balance of probabilities that the tenants paid rent for July and August but made no other payment of rent. I find that the landlord has established a total monetary claim in the amount of \$6,600.00 being unpaid rent for the five months from September, 2010 to and including January, 2011 plus the \$100.00 fee paid by the landlord for this application. I order that the landlord retain the deposit and interest of \$650.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5,950.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 20, 2011.
