



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties confirmed during the hearing that the tenancy began in February 2009 as 1 year fixed term tenancy that converted to a month to month tenancy on February 1, 2010 for the monthly rent of \$2,200.00 due on the 1st of each month with a security deposit of \$1,000.00 paid.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 7, 2011 with no effective vacancy date indicated due to \$2,200.00 in unpaid rent.

Testimony provided by the landlord and confirmed by the tenants indicates the tenants failed to pay the full rent owed for the months of June and July 2011 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on June 7, 2011.

The tenants testified that the landlord's agent who served the notice left the effective vacancy date blank because he didn't want to force the tenants out in such short a period of time. The landlord's agent at the hearing testified the date was left blank as an oversight only.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The tenants testified that failed to pay the rent because their bank accounts had been unknowingly drained by a family member and they have not been able to obtain financial help to resolve the matter.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is confirmed to have been received by the tenants on June 7, 2011 and the effective date of the notice is amended to June 17, 2011, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under section (46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,450.00** comprised of \$4,000.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,000.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,450.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

Dated: July 11, 2011.

Residential Tenancy Branch