



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent, money owed or compensation due to damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began April 1, 2011 with monthly rent of \$3850.00 and the tenants paid a security deposit of \$1925.00 and a pet damage deposit of \$1925.00.

On October 19, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, the tenants have not filed to dispute this notice.

The landlord stated that the tenants have not paid the October or November 2011 rent and currently owe the landlord \$7700.00 in unpaid rent. The landlord stated that the tenants repeatedly give him personal cheques for the rent but that there are never funds in the tenant's bank account to cover the rent. The landlord stated that the tenant's also keep promising to send bank drafts for the rent but have yet to do so.

The landlord stated that the tenants have repeatedly told the landlord in the past that a bank draft was being sent by courier, had been dropped off with the concierge and dropped off at the landlord's office but that this has never happened. The landlord stated that the tenant's also claimed to have sent 2 bank drafts that have 'gone missing' and that this is just more of the tenant's stories and not true.

The landlord stated that if the tenants had really sent a bank draft for \$11,550.00 to the landlord's office today, why did the tenant not make any effort to contact the landlord

and advise him of this. The landlord stated that he did not believe that a bank draft had actually been sent.

The tenant testified that they sent a bank draft for the October, November and December 2011 rent to the landlord's office just this afternoon through an attorney. The tenant did not provide a copy of the bank draft and stated that the attorney's office had unsuccessfully tried to fax a copy to the Residential Tenancy Branch evidence line. The tenant stated that she did not realize that the rent either had to be paid within 5 days or an application made to this office in 5 days to dispute the notice although this is clearly stated on the front of the notice. The tenant did not offer an explanation as to why the rent remained unpaid until just hours before the hearing today.

The tenant stated that they had paid rent by bank draft in the past however the evidence submitted by the landlord shows only personal cheques from the tenants which have been returned NSF. The tenant maintained that their attorney's were investigating where the missing bank drafts had gone.

The landlord expressed concern that the tenants were still in the rental unit and that the rent remains unpaid. The landlord requested an order of possession effective 2 days after service upon the tenants. The landlord is also seeking a monetary order for \$7700.00 in unpaid rent.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it is personally served on October 19, 2011. **Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 24, 2011.**

Based on the foregoing, I find that the tenants have conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

Accordingly I find that the landlord is entitled to a monetary order for \$7700.00.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenant(s). This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$7700.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for the amount of **\$7750.00**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: November 23, 2011.

Residential Tenancy Branch