



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, MNR, MNSD, MNDC, FF
Tenants: DRI, CNR, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenants sought to dispute a rent increase; to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the landlords.

As the tenants had filed their own Application for Dispute Resolution for this hearing seeking to cancel the landlord's Notice to End Tenancy for Unpaid Rent, I find the tenants were sufficiently aware of this hearing and as such I proceeded without the tenants in attendance.

Issue(s) to be Decided

The issues to be decided are whether the landlords are 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)*.

It must also be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to cancel a rent increase; to a monetary order for compensation for damage or loss and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 46, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on November 23, 2012 for a 1 year and 1 day fixed term tenancy beginning on December 1, 2012 for the monthly rent of \$1,600.00 due on the 1st of each

month. While the agreement states that a security deposit of \$800.00 was required the landlord submits the deposit was not paid;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 21, 2013 with an effective vacancy date of January 31, 2013 due to \$3,200.00 in unpaid rent and \$800.00 in unpaid security deposit; and
- A copy of a Contract of Purchase and Sale between the landlord and the tenants. The Contract stipulates that no deposit was required or paid and that the completion date was January 21, 2013. The Contract also stipulate that because the tenants had failed to pay rent on the property prior to the Contract that if the sale did not complete by January 21, 2013 the tenants would be responsible for the unpaid rent for the months of December 2012 and January 2013.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of December 2012, January 2013 and February 2013 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on January 21, 2013. The tenants applied to cancel the Notice on January 22, 2013.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The landlord testified the tenants did not provide any deposit in relation to the Contract of Purchase and Sale and that the completion never occurred by January 21, 2013

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. I find the notice was received by the tenants on January 21, 2013 and the effective date of the notice was January 31, 2013. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

As the tenants failed to attend this hearing I dismiss their Application for Dispute Resolution in its entirety. I also find that the tenant's failure to attend this hearing as the same effect as if they had not applied to dispute the Notice.

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 and I grant a monetary order in the amount of **\$4,850.00** comprised of \$4,800.00 rent owed and the \$50.00 fee paid by the landlord for this application.

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.

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: February 19, 2013

Residential Tenancy Branch