



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 dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing personally on January 12, 2010, the tenant did not participate in the conference call hearing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, is the landlord entitled to retain the security deposit in partial satisfaction of his claim?

Background and Evidence

The tenancy began on August 1, 2009. Rent in the amount of \$850.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$425.00.

The tenancy agreement also requires that the tenant pays $\frac{1}{4}$ of the utility bill for the building. The landlord would request the appropriate amount from tenants when the bills for gas and hydro were received.

The tenant failed to pay rent in the month of January, 2010 and failed to pay utilities for that month in the amount of \$226.69. On January 4, 2010 the landlord served the

tenant with a notice to end tenancy for non-payment of rent. That notice required the tenant to pay the outstanding amount or apply for dispute resolution within 5 days of receiving the notice, or the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the unit by that date. The tenant paid the outstanding rent and utilities for January on January 20, 2010, which is more than the 5 days allowed under the *Act*. The landlord made it clear to the tenant, by writing on the receipt issued, that the acceptance of that payment is for Use and Occupancy only, and therefore, has not reinstated the tenancy.

The tenant further failed to pay rent in the month of February, 2010. The utility amount for the month of February is not yet known. The landlord applied at the hearing for a monetary order for the rent due for February, 2010, and an order to retain the security deposit in partial satisfaction of that claim.

Analysis

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent for February, and did not pay the outstanding rent and utilities for January, 2010 within the 5 days allowed under the *Act*, nor did she apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

Conclusion

Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the landlord has established a claim for \$850.00 in unpaid rent for the month of February, 2010. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of

\$425.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$475.00. Since the amount of utilities for February, 2010 is not yet known, I cannot make an order with respect to that. The landlord may make an application for dispute resolution if the utilities remain outstanding for more than 30 days after being delivered to the tenant.

This order may be filed in the Small Claims Court 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: February 19, 2010.

Dispute Resolution Officer