

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by conference call on this date to deal with the landlord's application for an Order of Possession for unpaid rent, a monetary order for unpaid rent, as well as compensation for damage or loss under the Act, regulation or tenancy agreement, for an order to permit the landlord to retain the security deposit and pet damage deposits in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

The parties gave affirmed evidence and were given the opportunity to cross-examine each other on their evidence.

Issues(s) to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order as compensation or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit and pet damage deposits in partial satisfaction of the claim?

Background and Evidence

This tenancy began on March 1, 2009 as a fixed-term tenancy which was to expire on February 28, 2010, and then revert to a month-to-month tenancy. A copy of the tenancy agreement was provided by the landlord in advance of the hearing.

Rent in the amount of \$850.00 is payable on the 1st day of each month, and on

February 13, 2009, the landlord collected a security deposit in the amount of \$425.00.

On April 13, 2009, the landlord collected a pet deposit in the amount of \$150.00 as well as another \$50.00 on May 9, 2009.

The tenant failed to pay rent in the month of February, 2010, and on February 2, 2010, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the residence. That notice is deemed to be served 3 days after posting it. The tenant then has 5 days to dispute the notice or pay the rent in full, or is conclusively presumed to accept that the tenancy ends on the effective date of the notice. The tenant further failed to pay rent in the months of March and April, 2010, and still resides in the unit. The landlord is also claiming \$20.00 in late fees for each of the 3 months, as well as \$12.00 outstanding for late fees for the month of January, 2010.

The landlord further testified that the company offered an incentive to rent the unit by crediting the tenant's account \$250.00 at the beginning of the tenancy, which is recoverable by the landlord only if the tenant vacates the unit prior to the end of the fixed term. The landlord states that since the rent has not been paid, the landlord is entitled to receive that amount back from the tenant.

The landlord further stated that the tenancy agreement contains a clause for \$300.00 in liquidated damages if the tenant does not stay for the fixed term of the tenancy.

The tenant testified that he fell on hard times, and offered \$400.00 to the landlord's wife on or about February 3, 2010, but she refused to take it and told the tenant she wanted him to move out.

The tenant further testified that the landlord had the power turned off for about a half hour on March 10, 2010, and he called the police, who managed to get the landlord to turn the power back on. The landlord disputed that testimony, stating that the power outage was not caused by the landlord, and said that he had no intention of attending to it in the middle of the night for a tenant who did not pay his rent. He did, however, deal with the issue, and it turned out to be a breaker that he re-set and the power was restored.

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 and has not applied 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.

As for the monetary order, I find that the landlord has established a claim for \$2,622.00 in unpaid rent and late fees. Because the tenant is responsible for the payment of the rent for the balance of the fixed term of the tenancy, I find that the landlord is not entitled to the \$300.00 in liquidated damages, or for the \$250.00 incentive recovery.

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.

The landlord is entitled to a monetary order in the amount of \$2,622.00 in unpaid rent and late fees. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$625.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,047.00. 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: April 09, 2010.

Dispute Resolution Officer