



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and for a monetary order for money owed for compensation or damage under the *Act*, regulation or tenancy agreement.

The landlord's agent attended with a witness who is the caretaker of the units. Both gave affirmed testimony. The tenants did not attend the 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?

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act*, regulations or the tenancy agreement?

Background and Evidence

This fixed term tenancy began on January 7, 2010 and expires on February 28, 2011. Rent in the amount of \$2,150.00 is payable on the 1st day of each month. The tenancy agreement states that the tenant is to pay \$1,075.00 for a security deposit by January 6, 2010, however, the landlord's agent testified that the security deposit has not been paid, or has been applied to outstanding rent. A tenant ledger was provided in advance of the hearing showing that it was paid on January 6, 2010, however, the cheque was returned by the bank marked N.S.F. on January 11, 2010.

The landlord's agent testified that the tenants paid a pro-rated amount for rent for the month of January, 2010 in the amount of \$1,665.00. On January 27, the landlord's agent served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by putting it in the tenants' mail box.

No rent had been paid for the month of February, 2010, and another 10 Day Notice dated February 1, 2010 was served on February 4, 2010 by putting it in the tenants' mail box at 1:45 p.m.

On March 1, 2010, the landlord served the tenants with a Notice of Direct Request by posting the documents to the door of the residence. On that date, the tenants paid \$2,150.00, however the cheque was returned by the bank marked N.S.F. on March 5, 2010. The landlord's agent testified that he had applied for an order pursuant to the Direct Request process, however, the Dispute Resolution Officer directed that a participatory hearing be conducted.

On March 8, 2010, the tenants paid \$2,150.00 in cash for rent for March and \$960.00 toward the arrears, for which the landlord issued a receipt marked "for use and occupancy only." Then on March 15, 2010, the tenant paid an additional \$1,000.00 in cash, for which a receipt was issued "for use and occupancy only."

The witness also testified that the Notice to Reconvene a Hearing dated March 17, 2010 was served on March 23, 2010 by personally handing 2 packages directly to the female tenant for both tenants.

A third 10 Day Notice was issued on April 1, 2010 and served personally by handing it to the female tenant on April 5, 2010 at 6:30 p.m.

At the time of this hearing, the landlord testified that no rental payments had been made by the tenants for the month of April, 2010. The landlord's Tenant Ledger shows that rent payments are subject to a \$25.00 late fee, which is not contained in the tenancy agreement. The ledger also includes a fee of \$35.00 for N.S.F. fees, which is not

included in the tenancy agreement, nor do I have any evidence that the bank charged the landlords that fee.

Analysis

Firstly, I find that the landlord did not have cause to issue the Notice to End Tenancy in January, because January rent had been paid. However, I further find that the landlord did serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for unpaid rent in February. That document was served in accordance with Section 88(f) of the *Residential Tenancy Act*. I further find that the notice issued in February was properly served, and that writing "For Use and Occupancy Only" on receipts issued for payments thereafter do not constitute a reinstatement of the tenancy.

I've analyzed the Tenant Ledger, which shows a balance outstanding of \$3,560.00 to the end of April, 2010, including late fees and N.S.F. fees. It appears from the ledger that the following occurred:

DATE	DESCRIPTION	AMOUNT DUE	AMOUNT PAID	BALANCE
Jan 6/10	Security Deposit	\$1,075.00	\$1,075.00	0.00
Jan 6/10	Pro-rated rent f/Jan	\$1,665.00	\$1,665.00	0.00
Jan 14/10	Cheque Returned		-\$1,075.00	SD not paid
Feb 1/10	Feb Rent Due	\$2,150.00	0	\$2,150.00
Mar 1/10	Mar Rent Due	\$2,150.00	\$2,150.00	\$2,150.00
Mar 8/10	Payment		\$2,150.00	0.00
Mar 8/10	Payment		\$960.00	\$(960.00)
Mar 10/10	Cheque Returned		-\$2,150.00	1190
Mar 15/10	Payment		\$1,000.00	190
Apr 1/10	April Rent Due	\$2,150.00	0	\$2340

The landlord is also claiming rent for the month of May, 2010, in the amount of \$2,150.00 in addition to the amount outstanding. I find that the tenants owe the landlord \$4490.00 in unpaid rent.

With respect to the landlord's application for an Order of Possession, the *Act* states that:

46 (5) If a tenant who has received a notice under this section does not pay the rent or make application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The tenants did not dispute the notice, and therefore are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and I find that the landlord is entitled to an Order of Possession.

Conclusion

I hereby grant an Order of Possession in favour of the landlord. 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 \$4,490.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee and I grant the landlord an order under section 67 for the balance due of \$4,540.00. 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: May 05, 2010.

Dispute Resolution Officer