



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, FF

Tenant: MT, CNR, MNDC, MNSD, OLC, PSF, LRE, FF

Introduction

This hearing was convened by way of conference call on this date to deal with cross applications filed by the landlords and the tenant. The landlords have applied for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlords to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for an order allowing the tenant more time to make an application to cancel a Notice to End Tenancy, for an order cancelling a notice to end tenancy for unpaid rent or utilities, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order that the landlords return all or part of the pet damage deposit or security deposit, for an order that the landlords comply with the *Act*, regulation or tenancy agreement, for an order that the landlords provide services or facilities required by law, for an order suspending or setting conditions on the landlords' right to enter the rental unit, and to recover the filing fee from the landlords for the cost of this application.

Despite the tenant's own application and despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents personally on July 23, 2010, the tenant did not attend the conference call hearing. Accordingly, the tenant's application is hereby dismissed without leave to reapply.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent or utilities?

Are the landlords entitled to a monetary order for unpaid rent or utilities?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began on April 1, 2009 and was to expire on June 30, 2010. A written tenancy agreement, a copy of which was provided in advance of the hearing states that the tenancy is for a fixed length of time, being 15 months, ending on June 30, 2010 and that at the end of the fixed term, the tenancy ends and the tenant must move out of the residential unit. Initials of the landlord and the tenant appear in the tenancy agreement adjacent to this clause.

Rent in the amount of \$650.00 is payable in advance on the 1st day of each month, and at the outset of the tenancy, the landlords collected a security deposit from the tenant in the amount of \$300.00.

The landlord testified that the tenant failed to pay rent in the months of May, June and July, 2010 and on July 8, 2010 the landlord served the tenant personally with a notice to end tenancy for non-payment of rent. A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was provided in advance of the hearing. That notice states that it was issued on July 8, 2010 and has an expected date of vacancy of the rental unit on the same day, being July 8, 2010.

The tenant further failed to pay rent in the months of August and September, 2010.

The landlord also testified that the tenant served him with the Tenant's Application for Dispute Resolution on the same day that the landlord served the tenant with his application.

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, although an error appears in the document. Section 53 of the *Residential Tenancy Act* states that:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I find that the correct effective date of vacancy in the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is July 18, 2010, and the tenant has not paid the outstanding rent and has not appeared at this conference call hearing dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

Further, the tenancy agreement is for a fixed period that requires the tenant to move out of the residential unit on June 30, 2010.

As for the monetary order, I find that the landlord has established a claim for \$3,250.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee.

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.

I further order that the landlord retain the deposit and interest of \$300.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the

balance due of \$3,000.00. 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: September 14, 2010.

Dispute Resolution Officer