



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, ET

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an order ending the tenancy early and obtaining an Order of Possession; for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony, and provided an evidence package in advance of the hearing. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents on November 5, 2010, the tenants did not attend the conference call hearing.

All information provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to an order ending the tenancy early and obtaining an Order of Possession, pursuant to Section 56 of the *Residential Tenancy Act*?

Is the landlord entitled to a monetary order for damage to the unit, site or property?

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

Is the landlord entitled to an order permitting the landlord to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on May 1, 2009. Rent in the amount of \$1,500.00 per month is payable in advance on the 1st day of each month. On April 13, 2009 the landlord collected a security deposit from the tenants in the amount of \$750.00. A copy of the tenancy agreement, dated April 30, 2009 was provided in advance of the hearing.

The landlord testified that on September 19, 2010 the landlord attended at the residence to conduct an inspection. The female tenant introduced her to a visitor and told her that the male tenant had departed. The landlord told the tenant that since he was no longer residing in the unit, the parties should enter into a new tenancy agreement without the male tenant named. The parties agreed that they would meet on October 1, 2010 to complete the new tenancy agreement and conduct a condition inspection. When the landlord attended on October 1, 2010, the visitor advised that the tenant was out of town and that the visitor is now residing in the unit.

The tenant failed to pay rent for the month of October, 2010, and on October 26, 2010 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by serving a male person who also apparently resided with the tenant. The male visitor stated that the tenant and the other visitor were not there, and he did not want to accept the notice. He then became violent and pushed the landlord's husband. The police were called who spoke to the occupants and advised the landlord that the visitor they had asked for when they first attended at the unit was in fact inside the rental unit.

A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was provided in advance of the hearing, and states that the tenants failed to pay rent in the amount of \$1,500.00 that was due on October 1, 2010, and that the tenants have failed to pay utilities in the amount of \$151.28 following a written demand on October 1, 2010. The notice is dated October 26, 2010 and contains an effective move-out date of November 5, 2010.

The landlord further testified that the tenants had damaged a mirror and some glass inside the rental unit. Further, rent for the month of November, 2010 has not been paid, and the landlord stated that the tenant failed to pay utilities as required under the tenancy agreement. The landlord is claiming \$3,000.00 in unpaid rent and \$151.28 for unpaid utilities. The landlord did not provide evidence of the utilities owing.

Analysis

I find that the landlord has established that rent has not been paid, and the tenants owe rent for the months of October and November, 2010. I accept the evidence of the landlord that the notice to end the tenancy was served on October 26, 2010 by serving a person apparently residing in the rental unit. I further find that the tenants were properly served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants have not disputed the notice and have not paid the outstanding rent, and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, which is November 5, 2010.

With respect to the landlord's application to end the tenancy early and obtain an Order of Possession, I find that the landlord has proven that the tenants have already overstayed beyond the effective date of the notice to end the tenancy and an order ending the tenancy early without the necessity of serving a notice to end the tenancy is not necessary. The landlord will have an Order of Possession.

I further find that the tenants are in arrears for rent in the amount of \$3,000.00. I cannot find that the tenants are in arrears with respect to utilities. The landlord has not provided me with a copy of any utility bills or any evidence that the tenants were notified of the amount or due date of such utilities. The landlord is also entitled to an order to recover the filing fee in the amount of \$50.00 from the tenants.

With respect to the landlord's application for a monetary order for damage to the unit, site or property, I find that the application has been made prematurely. The *Residential Tenancy Act* states that the landlord and the tenants together must inspect the unit, and

if damages are to be claimed by the landlord, the tenants ought to have an opportunity to rectify any damage or loss that the landlord may claim.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

Based on the above facts I find that the landlord is entitled to an Order of Possession. The tenants must be served with the Order of Possession. Should the tenants 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 \$3,000.00 in unpaid rent. 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 \$750.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,300.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: November 25, 2010.

Dispute Resolution Officer