



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord and her agent attended the hearing at the scheduled start time. The tenant entered the hearing 11 minutes after the scheduled start time, at which point she was affirmed. The landlord and her agent had previously been affirmed.

The tenant acknowledged service of the Notice of hearing via registered mail sent on December 9, 2010. Both tenants were served via registered mail sent to the rental unit address. Copies of the Canada Post receipts were submitted as evidence of service.

I then reviewed the landlord's testimony, the application and evidence submissions made by the landlord. The tenant stated she did not receive the evidence posted to her door on December 18, 2010. I did not consider that evidence and relied upon the oral testimony of both parties.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent and utilities?

Is the landlord entitled to a monetary Order?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenants signed a tenancy agreement that commenced July 1, 2010; rent was \$1,800.00 per month plus \$100.00 per month for utilities. Rent was due on the first day of each month. The tenant has paid security and pet deposits totalling \$1,200.00. The landlord did not submit a copy of the signed tenancy agreement as evidence.

The landlord stated that on November 24, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 12, 2010, was served by posting to the tenant's door at approximately 1:30 p.m. with the agent, the agent's spouse, the landlord and her son present as witnesses.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,320.00 in unpaid October and November rent, plus \$500.00 in unpaid utilities within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord confirmed that since the Notice ending the tenancy was served she has received 2 payments from the tenant, totalling \$440.00. The landlord has also received the January rent payment made by a government agency in the sum of \$480.00 and \$660.00 for each of the 2 tenants. The landlord has received those monthly payments for each month of the tenancy.

The tenant testified that the government agency wants copies of the utility bills before payment will be made. The tenancy agreement described by the landlord indicated that there is a monthly payment in the sum of \$100.00 toward utilities that is not dependent upon the bills.

The tenant testified that she has recently mailed the landlord \$500.00 and that on November 7 and December 8, 2010, the landlord received payments each in the sum of \$554.00 from the government that was to be used toward rent owed. The landlord denied having received these additional payments and the tenant did not submit evidence of the payments having been made.

The landlord submitted that she is owed \$660.00 for each of October, November, December, 2010; less the payment made in the sum of \$440.00; plus utilities in the amount of \$100.00 for each month of the tenancy; totalling \$2,140.00.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on November 27, 2010.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on November 27, 2010, I find that the earliest effective date of the Notice is December 7, 2010.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 7, 2010.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on December 7, 2010, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that the tenants had five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenants exercised either of these rights therefore; pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served.

In the absence of evidence to the contrary, I find that the tenants have not paid rent and utilities in the amount of \$2,140.00 from July to December, 2010, and that the landlord is entitled to compensation in that amount.

Even if the tenants had paid the amounts she submits were given to the landlord, the tenants failed to pay the rent in full within 5 days of November 27, 2010. Any proof of additional payments made to the landlord that the tenants may have in their possession can be presented to Small Claims Court.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.



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I find that the landlord is entitled to retain the tenant's security and pet deposit in the amount of \$1,200.00, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$2,900.00, which is comprised of \$2,400.00 in unpaid rent and utilities plus \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security and pet deposits, in the amount of \$1,200.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$990.00. In the event that the tenants do not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: December 29, 2010.

Residential Tenancy Branch