



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 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, 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.

All parties attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The landlord also provided an evidence package in advance of the hearing, and provided a copy to the tenants. All information and testimony provided has been reviewed and is considered in this Decision.

Issue(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 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 December 1, 2010 and the tenants still reside in the rental unit. Rent in the amount of \$1,250.00 per month is payable in advance on the 1st day of each month.

The landlord testified that on November 27, 2010 the tenants contacted him about renting the unit and the parties agreed to a tenancy commencing December 1, 2010. The tenants gave the landlord 2 cheques, one in the amount of \$1,250.00 for the first month of rent and the other for \$625.00 for the security deposit. The landlord signed the security deposit cheque over to his mother because he felt he owed her the money. The landlord had been living in the rental unit, but moved his belongings to the downstairs unit so the tenants could move in on December 1, 2010.

He further testified that on December 7, 2010 his mother called him to advise that the cheque he had signed over to her did not clear the bank. He then went to his bank and

discovered that the rent cheque had also bounced. He contacted the tenants the next day who advised that it was a bank error.

On December 9, 2010 the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to the male tenant. A copy of that notice was not provided in advance of the hearing, however the landlord testified that the notice stated that the tenants failed to pay rent in the amount of \$1,250.00 that was due on December 1, 2010, it was dated December 9, 2010 and contained an expected date of vacancy of December 19, 2010. The tenants have not paid the rent or the security deposit.

The tenants testified that no move-in condition inspection report or tenancy agreement was ever prepared. They further testified that the landlord contacted them on December 9, 2010, not the 8th to advise that the cheques had not cleared the bank. The male tenant told the landlord he would contact his bank. They called the landlord back that afternoon and told him that the employer's cheque had bounced, and they were to meet with the employer on the weekend. On Friday, the 10th of December the landlord spoke to the tenants and told them they had to move out. He had with him a blank 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and asked them to fill in the blanks. He then took the notice back to his suite.

On December 13, 2010 the landlord again attended the rental unit and told the tenants they had 2 days to move out and stated that he had given them previous verbal notice which was good enough. The landlord had used his key, walked in and put the notice on the couch.

Analysis

In the circumstances, I am not satisfied that the tenants were properly served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of that notice has not been provided and the tenants dispute the method and date of service of the notice. Therefore, the landlord's application for an Order of Possession cannot be granted.

As for the monetary order, I find that the landlord has established a claim for unpaid rent for the months of December and January in the amount of \$1,250.00 per month. The landlord is also entitled to recovery of the \$50.00 filing fee.

Since the undisputed evidence of the parties is that the tenants did not pay a security deposit, I cannot order that the landlord retain any portion of it in partial satisfaction of the monetary claim before me.



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Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

The application for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim is hereby dismissed.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance of rent due and the filing fee in the total amount of \$2,550.00. 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: January 11, 2011.

Residential Tenancy Branch