



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPB, MND, MNSD, MNR, OLC, LRE, FF

Introduction

This hearing dealt with two applications as follows:

By the landlord: as an application for an Order of Possession for the tenant's breach of an agreement with the landlord; for a Monetary Order for damage to the unit, unpaid rent or utilities, and to keep all or part of the pet damage and security deposits; and to recover the filing fee associated with his application.

By the tenant: as a cross application for an Order for the landlord to comply with the Act, regulation, or tenancy agreement; and to suspend or set conditions on the landlord's right to enter the rental unit.

The landlord participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the tenant by posting the notice on the tenant's door on February 8th, 2011. The tenant did not participate; the tenant's application is hereby dismissed without leave to reapply and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single bedroom in the basement suite of a detached home. Pursuant to a written agreement, the fixed term tenancy started on November 14th, 2010 and ended on January 13th, 2011, at which time the term of the agreement specified that the tenant must move out of the unit. The rent of \$550.00 was payable on the 14th of each month, and the tenant paid a security deposit of \$275.00.

In her written submissions, the landlord provided a copy of the tenancy agreement showing that the tenant initialled the appropriate clause specifying that the tenancy ended and that he must move out of the unit on January 13th, 2011. During the hearing, the landlord testified that the tenant has not moved out of the unit yet, and has not paid rent since January 14th, 2011.

The landlord made a monetary claim for the month of January and part of February, and stated that the tenant also damaged a door in the unit.

Analysis

I accept the landlord's undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Based on the available evidence, I find that the tenant continues to occupy the rental unit after the tenancy ended and is an "overholding tenant" pursuant to section 57(1) of the *Residential Tenancy Act*. I find that the landlord is entitled to an Order of Possession effective two days from the date the order is served upon the tenant.

The tenant has not paid rent since January 14th, 2011.

Accordingly, I find that the landlord is entitled to a loss of rent for that month and the month of February for the combined sum of \$1100.00. The tenant has reported unspecified damages to the suite. In the absence of substantive evidence such as receipts, and since the tenant has not moved out of the unit yet, I find this claim to be premature and I decline to make a finding regarding this portion of the landlord's application.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord has established a claim of \$1100.00. Since she was successful, I also find that the landlord is entitled to recover the \$50.00 filing fee for the sum of \$1150.00. Pursuant to Section 67 of the Act, I authorize the landlord to retain the tenant's \$275.00 security deposit and I award the landlord a monetary order for the balance of \$875.00.

This Order may be registered 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: February 16, 2011.

Residential Tenancy Branch