

Decision

Dispute Codes: OPR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an order of possession / a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony.

The landlord's application was filed on January 14, 2011. Subsequently, the landlord served the application for dispute resolution and notice of hearing (the "hearing package") on the tenants by posting on their door on January 21, 2011, and then by way of registered mail on January 26, 2011. The tenants did not appear at the hearing.

Issues to be decided

- Whether the hearing package has been properly served on the tenants
- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from January 15, 2011 to January 15, 2012. Rent in the amount of \$1,800.00 is payable in advance on the first day of each month. Pursuant to the tenancy agreement, a payment of \$900.00 is required for the security deposit, while an additional \$900.00 is required for the pet damage deposit (total: \$1,800.00).

The landlord testified that after he departed from a meeting with the tenants in a shopping centre on January 9, 2011, he realized that they had only paid him \$1,120.00 of the \$1,800.00 he had requested for the security / pet damage deposits combined. Accordingly, the landlord testified that there is a shortfall of \$680.00 (\$1,800.00 - \$1,120.00), despite his having issued a receipt for payment totaling \$1,800.00. At this same meeting, the landlord testified that he gave a fob and key to one of the tenants.

Thereafter, the landlord testified that the tenants verbally informed him on January 12, 2011 that they had decided not to continue with the tenancy.

Further to the basic tenancy agreement, the landlord set out “additional terms” which include, but are not limited to, a provision for pre-payment of rent for 3 months. There is no evidence that any rent has thus far been collected.

Additionally, there is no evidence of a move-in condition inspection report. Neither is there any evidence that a notice to end tenancy was served on the tenants, nor evidence that the tenants have given written notice to end the tenancy. Finally, there is no conclusive evidence either way that the tenants continue to reside in the unit or have abandoned it.

In summary, in this present application the landlord seeks an order of possession for unpaid rent / a monetary order as compensation for loss of rental income & retention of the security / pet damage deposit(s) even while, as earlier stated, there is no conclusive evidence that the tenants have either vacated the unit or continue to reside there / compensation for cleaning the carpet at start of tenancy after the insistence of the tenants / compensation for numerous trips to & from the unit / compensation arising from the tenants' failure to return a fob & key / and compensation for the filing fee. This present application does not appear to include an application for a monetary order as compensation for unpaid rent.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 59 of the Act speaks to **Starting proceedings**, and provides in part as follows:

59(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the application for dispute resolution was not served on the tenants in accordance with the above statutory provisions. Specifically, while the landlord's application was filed on January 14, 2011, it was subsequently served on the tenants by way of posting on the unit door on January 21, 2011, and then by way of registered mail on January 26, 2011.

The landlord has the option of re-applying for dispute resolution and serving the hearing package(s) according to the above statutory provisions.

In the meantime, the particular attention of the parties is drawn to the following sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 44: **How a tenancy ends**

Section 45: **Tenant's notice**

Section 46: **Landlord's notice: non-payment of rent**

Section 47: **Landlord's notice: cause**

Section 55: **Order of possession for the landlord**

Section 56: **Application for order ending tenancy early**

Conclusion

Following from all of the above, the application is hereby dismissed with leave to reapply.

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*.

DATE: February 2, 2011

Residential Tenancy Branch