



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 tenant for the cost of this application.

The landlord was represented at the hearing by his wife who gave affirmed testimony however, despite being served with the Landlord's Application for Dispute Resolution, notice of hearing and evidence package by registered mail on January 4, 2011, the tenant did not attend the conference call hearing. All evidence and testimony provided by the landlord's agent 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 retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began on December 1, 2010 and was to expire on May 30, 2011. Rent in the amount of \$725.00 per month was payable in advance on the last day of the previous month according to the tenancy agreement, a copy of which was provided in advance of the hearing. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$350.00 as well as the first month's rent. The rental unit is a basement suite in a house, and the landlord and his wife live in the upper unit.

The landlord's agent further testified that the tenant failed to pay rent when it was due for the month of January, 2011, and on January 4, 2011 the landlord personally served

the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was also provided in advance of the hearing. That notice states that the tenant failed to pay rent in the amount of \$725.00 that was due on December 31, 2010, the notice is dated January 4, 2011, and contains an expected date of vacancy of January 14, 2011.

The landlord's agent further testified that she noticed the tenant moving some belongings from the basement suite after the notice to end the tenancy was served. She has not seen the tenant since about January 14, 2011. The landlord has not received a forwarding address from the tenant, and has not received any rent from the tenant since November 30, 2010. She further testified that the tenant had provided a postal box number at the outset of the tenancy, and door-to-door mail delivery is not available in the area. She stated that the box number provided was used as the mailing address of the tenant when the Landlord's Application for Dispute Resolution and other documents were sent by registered mail, and the post office has subsequently returned that envelope to the landlord marked "Moved/Address Unknown." The landlord does not have another address for the tenant.

The landlord's agent further testified that when her husband served the notice to end the tenancy, he noticed that a cupboard had been removed from the rental unit, and that the tenant had told him that he threw it away.

Analysis

Based on the testimony of the landlord's agent and wife, I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

I further find that the Landlord's Application for Dispute Resolution, notice of hearing documents and evidence of the landlord has been served on the tenant in accordance with the *Residential Tenancy Act* and the Rules of Procedure.

As for the monetary order, I find that the landlord has established a claim for \$725.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee.

With respect to the landlord's testimony about the missing cupboard, the landlord has not applied for a monetary order for damages to the unit, site or property and I cannot, therefore make any order with respect to damages. The landlord must provide the tenant with at least 2 opportunities to conduct a move-out condition inspection report. If

the tenant fails to attend on either occasion, the landlord may complete that inspection himself. If any damages are noted, the landlord is at liberty to apply for dispute resolution for a monetary order to recover those damage expenses.

Conclusion

Based on the above facts I find that the landlord is entitled to an Order of Possession. The tenant must be served with the order of possession. Should the tenant 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.

I further order that the landlord retain the security deposit and interest of \$350.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$425.00. 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: February 03, 2011.

Residential Tenancy Branch