



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 landlords to retain the security deposit in partial or full satisfaction of the claim; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlords attended the conference call hearing, gave affirmed testimony and provided an evidence package in advance of the hearing. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on January 27, 2011, the tenant did not attend.

All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent or utilities?

Are the landlords entitled to a monetary order for unpaid rent or utilities?

Are the landlords entitled to retain the security deposit in partial or full satisfaction of the claim?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This fixed term tenancy began on August 1, 2010 and is to expire on July 31, 2011. Rent in the amount of \$1,710.00 per month is payable in advance on the 1st day of each month, which includes \$60.00 per month for parking. The landlords' agent testified that tenants are set up for electronic payments of the monthly rent and parking fees. On

July 28, 2010 the landlords collected a security deposit from the tenant in the amount of \$825.00.

The landlord's agent further testified that the tenant did not pay rent for the months of December, 2010 or January or February, 2011. The electronic transfers were not cleared by the bank, thereby causing the electronic transfers to be returned to the landlord unpaid. The tenancy agreement, a copy of which was provided in advance of the hearing states that late payments or N.S.F. cheques for rental payments are subject to a \$25.00 fee. The landlords claim 3 months of unpaid rent and 3 months of late fees.

The landlords' agent also testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 10, 2011 by posting it to the door of the rental unit. A copy of that notice as well as a copy of the proof of service was also provided in advance of the hearing. The notice is dated January 10, 2011 and states that the tenant failed to pay rent in the amount of \$3,470.00 that was due on January 1, 2011 and contains an expected date of vacancy of January 20, 2011.

The agent further testified that on January 24, 2011 the building manager went into the rental unit after giving 24 hours written notice to enter. The building manager then emailed the landlord's agent stating that a bed remained against the wall, and other personal items of the tenant were piled up against the wall inside the rental unit; there was no food in the cupboards or fridge. It appeared that the tenant had moved out, but the landlords' agent and the building manager are not sure.

Analysis

Based on the testimony of the landlords' agent I find that the tenant was served with a notice to end tenancy for non-payment of rent. The *Residential Tenancy Act* states that serving documents by attaching to the door of the rental unit are deemed to have been served 3 days after posting. In the circumstances, I find that the tenant was deemed to be served on January 13, 2011. The tenant would then have 5 days from that date to pay the rent or apply for dispute resolution to dispute the notice. The *Act* further states that if the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which cannot be earlier than 10 days after the date of service. I find that the effective date of the notice is incorrect on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The *Act* further states that:

52 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In the circumstances, I find that the earliest effective date that complies with the applicable section is January 23, 2011.

I further find that 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. Based on the above facts I find that the landlord is entitled to an Order of Possession.

As for the monetary order, I find that the landlord has established a claim for \$5,205.00 in unpaid rent and late fees as provided for in the tenancy agreement for the months of December, 2010, January and February, 2011. The landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the landlords. 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 order that the landlord retain the security deposit and interest of \$825.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$4,480.00. 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 09, 2011.

Residential Tenancy Branch