



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 this date 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 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.

The landlord company was represented at the conference call hearing by an agent, who also called a witness, the building manager. Both gave affirmed testimony, and the agent 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, along with a copy of the evidence package, the tenant did not attend the hearing. At the outset of the hearing, the landlord's agent advised that she checked the Canada Post website prior to the commencement of the hearing, and the tenant has not yet picked up the registered mail package. The *Residential Tenancy Act* states that service effected by registered mail is deemed to have been served 5 days after mailing. The landlord's agent testified that the registered mail was sent on January 27, 2011 and provided proof of that mailing prior to the commencement of the hearing. I therefore find that the tenant was served in accordance with the *Act*, and was deemed to have been served on February 1, 2011.

All testimony and evidence received 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 full or partial satisfaction of the claim?

Is the landlord 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 month-to-month tenancy began on November 5, 2010, and the tenant paid a pro-rated amount of rent for that month. Rent in the amount of \$850.00 per month was thereafter payable in advance on the 1st day of each month. On October 25, 2010 the landlord collected a security deposit from the tenant in the amount of \$425.00.

The landlord's agent testified that the tenant failed to pay rent when it was due for the month of January, 2011. The landlord's witness testified that on January 4, 2011 he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of that notice was provided in advance of the hearing and states that the tenant failed to pay rent in the amount of \$850.00 that was due on January 1, 2011, the notice is dated January 4, 2011 and contains an effective date of vacancy of January 14, 2011.

The landlord's agent and witness also testified that the tenant paid \$790.00 towards the rent owed for January on January 28, 2011. The tenant was issued a receipt that had clearly marked "For Use and Occupancy Only." The tenant has also failed to pay any rent for the month of February, 2011.

The landlord's agent and witness also testified that the tenant has not paid any further rent, and has not served the landlord or its agents with an Application for Dispute Resolution disputing the notice to end the tenancy which was issued by the landlord on January 4, 2011.

Analysis

In the circumstances, I find that the tenant was personally served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 4, 2011. The tenant did not pay the rent in full within the 5 days permitted under the *Act*, and the landlord issued a receipt for use and occupancy only when the tenant made a partial payment of January's rent. The tenant did not dispute the notice, and has therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

I further find that the tenant is currently in arrears the sum of \$60.00 for January and \$850.00 for the month of February, 2011, for a total of \$910.00. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant. The tenant must be served with the Order of Possession. If the tenant failed 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 of \$425.00 in partial satisfaction of the claim, and I grant a monetary order under Section 67 of the *Residential Tenancy Act* in favour of the landlord for the sum of \$535.00. 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 10, 2011.

Residential Tenancy Branch