



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 landlord to keep all or part of the security deposit or pet damage deposit in full or partial 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 tenants for the cost of this application.

The landlord provided verbal testimony that she served the Landlord's Application for Dispute Resolution and notice of hearing documents on the tenants by personally serving one of the tenants. Neither tenant attended the conference call hearing.

The landlord provided affirmed testimony, and evidence in advance of the hearing. All evidence and testimony provided 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 an order permitting the landlord to keep all or part of the security deposit or pet damage 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

The landlord testified that this tenancy began on February 1, 2007 and the tenants still reside in the rental unit. Rent in the amount of \$855.00 per month is payable in advance on the 1st day of each month. On January 14, 2007 the landlord collected from

the tenants a security deposit in the amount of \$400.00 and on January 17, 2007 a pet damage deposit in the amount of \$400.00.

The landlord further testified that on February 12, 2011 she personally served one of the tenants with the Landlord's Application for Dispute Resolution and notice of hearing package, and the tenant signed an acknowledgement of that service.

The landlord further testified that the tenants are sisters and have a history of late rental payments. In September, 2010 the landlord applied for dispute resolution against the tenants and obtained an Order of Possession and a monetary order. At that time the tenants were in arrears \$852.50 and the landlord was granted an order permitting the landlord to retain the security deposit and pet damage deposit and obtained a monetary order for \$78.79. The landlord further testified that the tenants then appeared to be making an effort, so she let them stay. The tenants paid the outstanding rental amounts and the security deposit and pet damage deposit are both still held in trust by the landlord.

The landlord again served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 2, 2011, a copy of which was provided in advance of the hearing. That notice is dated February 2, 2011 and states that the tenants failed to pay rent in the amount of \$489.00 that was due on February 1, 2011 and contains an expected date of vacancy of February 12, 2011. The landlord further testified that the notice was served on February 2, 2011 by posting it to the door of the rental unit.

The landlord also testified that the tenants paid \$120.00 toward the arrears on February 12, 2011, leaving a balance of rent outstanding of \$369.00. The landlord issued a receipt for that payment that stated: "For Use and Occupancy Only." The tenants have not paid the outstanding amount of \$369.00.

Analysis

Firstly, dealing with the Decision and orders made by the Dispute Resolution Officer in June, 2010, I find that the landlord has failed to act on those orders and testified that she allowed the tenants to stay. I further find that the orders made by the Dispute Resolution Officer are void and unenforceable since the landlord reinstated the tenancy, and I therefore find that the orders are not res judicata.

Based on the landlord's testimony I find that the tenants were served with a notice to end tenancy for non-payment of rent. I further find that since the notice was served by posting it to the door of the rental unit, the notice is deemed to have been served 3 days after such service, and the tenants are therefore deemed to have been served on

February 5, 2011. I also find that the effective date of vacancy on the notice is incorrect, in that it must be no sooner than 10 days after the tenants were deemed to have been served, or February 15, 2011. Pursuant to Section 53 of the *Act*, the notice is deemed to be changed to the earliest effective date that complies with the *Act*.

The *Act* provides that the tenants have 5 days to pay the rent from the date of service or apply for dispute resolution. The tenants have not paid the outstanding rent and have not applied for dispute resolution to dispute the notice and are therefore conclusively presumed to have accepted that the tenancy ended on the deemed effective date of the notice. Based on the above facts I find that the landlord is entitled to an Order of Possession. The tenants must be served with the Order of Possession. Should the tenants 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.

As for the monetary order, I find that the landlord has established a claim for \$369.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$411.87 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$7.13 from the tenant that was served with the Landlord's Application for Dispute Resolution. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

With respect to the landlord's application for an order permitting the landlord to retain the pet damage deposit, I refer to Section 38 (7) of the *Residential Tenancy Act*, which states that:

38 (7) If a landlord is entitled to retain an amount under subsection (3) [*ordered by the director or remains unpaid at the end of the tenancy*] or (4) [*agreed in writing by the tenant or ordered by the director*], a pet damage deposit may be used only for damage caused by a pet to residential property, unless the tenant agrees otherwise. [*italics added*]

I have no evidence before me that the tenants have agreed or any evidence of damage caused by a pet. Therefore, I must dismiss that portion of the landlord's application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord. If the landlord serves the Order of Possession on the tenants, and the tenants

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 hereby grant a monetary order in favour of the landlord as against the tenant who was served with the Landlord's Application for Dispute Resolution in the amount of \$7.13. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

I further order that the landlord comply with Section 38 of the *Act* as it relates to the pet damage deposit currently held in trust by the landlord on behalf of the tenants.

I further order that the orders issued by the Dispute Resolution Officer in June, 2010 that were not acted upon by the landlord are hereby cancelled.

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 23, 2011.

Residential Tenancy Branch