



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, FF, ET, O
Tenant: MT, CNR, ERP, RP, LRE, FF, O

Introduction

This hearing was convened by way of conference call to deal with cross applications filed by the landlord and by the tenants. The landlord has applied for an order ending the tenancy early and obtaining an Order of Possession; for an Order of Possession for unpaid rent or utilities; for an order permitting the landlord to retain all or part of the pet damage deposit or security deposit in partial or full satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application.

The tenant has applied for more time to make an application to cancel a notice to end tenancy; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord make repairs to the unit, site or property and emergency repairs for health or safety reasons; for an order suspending or setting conditions on the landlord's right to enter the rental unit; and to recover the filing fee from the landlord for the cost of this application.

The landlord's application was scheduled to be heard on February 24, 2011, and at that time, the application for an order ending the tenancy early and obtaining an Order of Possession was withdrawn by the landlord, and the landlord's application for an Order of Possession for unpaid rent or utilities was heard. An Order of Possession was granted in favour of the landlord. The tenant's application was not before me, and as such, I adjourned the balance of the landlord's application to today to be heard as a cross application with the tenants' application.

The landlord attended the hearing today, however the tenants did not attend. Therefore, the tenants' application must be dismissed in its entirety. The landlord gave affirmed testimony and was represented by counsel. All information provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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?

Background and Evidence

This month-to-month tenancy began on November 1, 2010. Rent in the amount of \$1,300.00 per month is payable in advance on the 1st day of each month. The landlord had intended to collect a \$600.00 security deposit from the tenant, although only \$400.00 was actually paid to the landlord.

The landlord testified that the tenant only paid \$1,250.00 for rent for the month of November, 2010. He stated that the tenant paid all of December's rent, but failed to pay rent when it was due in January, 2011. On January 4, 2011 the tenant paid \$773.06 leaving a balance due of \$526.94. The tenant again failed to pay rent for the month of February, 2011, and the landlord is claiming \$526.94 for January's rent, \$1,300.00 for February, and asks to keep the security deposit in the amount of \$400.00.

Analysis

In the circumstances and in the absence of any evidence to the contrary, I find that the tenant is in arrears of rent the sum of \$1,826.94. The landlord claimed that amount, being the amounts due for January and February, 2011, but did not claim \$50.00 for the month of November, 2010. I can only assume that the amount was paid prior to the commencement of this hearing.

I further find that the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

I order that the landlord retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,476.94. This order may be filed in the

Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenants' application is hereby dismissed without 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*.

Dated: February 28, 2011.

Residential Tenancy Branch