



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, 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; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidence 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 February 18, 2011, the tenant did not attend the conference call hearing. All information 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?

Background and Evidence

The landlord testified that this fixed-term tenancy began on April 15, 2010 and was to expire on April 15, 2011. The landlord collected half a month's rent at the beginning of the tenancy, as well as \$475.00 for a security deposit on March 25, 2010 from the tenant. Rent in the amount of \$1,150.00 per month is payable in advance on the 1st day of each month.

The landlord also testified that the tenant is often late with the rent. On January 31, 2011 he attended to collect for February's rent, but the tenant stated she could only pay half of it on February 1, 2011 and the other half on the 5th of the month. The landlord replied that that was not acceptable and that he wanted all the rent on February 1, 2011. On February 1, 2011, the tenant sent the landlord a text message stating that she wasn't going to pay him anything.

On February 2, 2011, the landlord had not received any rent from the tenant, and he again attended the unit but the tenant was not at home. He posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit, a copy of which was provided in advance of the hearing. That notice states that the tenant failed to pay rent in the amount of \$1,150.00 that was due on February 1, 2011; the notice is dated February 2, 2011 and contains an expected date of vacancy of February 11, 2011. He further stated that both pages of the form were posted to the door of the rental unit.

The landlord claims \$1,150.00 for rent for the month of February, in addition to loss of revenue for the following month. He also stated that the tenant had sent a text message to him stating that she would be moving on February 28, 2011 but he is not sure if she has moved. He has not received a key or a forwarding address from the tenant.

Analysis

The *Residential Tenancy Act* states that if the tenant does not pay rent when it is due, the landlord may issue a notice to end the tenancy. Once served, the tenant has 5 days to pay the rent in full, in which case the notice is of no effect, or apply for dispute resolution to dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In the circumstances, I find that the tenant was deemed to have been served with the notice 3 days after posting it to the door of the rental unit, or on February 5, 2011. The tenant did not pay the outstanding rent or apply for dispute resolution by February 10, 2011. I further find that the effective date of the notice, or the date the tenant is expected to vacate the rental unit, ought to be February 15, 2011. Pursuant to Section 52 of the *Residential Tenancy Act*, I find that the effective date of the notice is automatically changed to the earliest date that complies with the *Act*, which is February 15, 2011.

I further find that the landlord is entitled to an Order of Possession.

As for the monetary order, I also find that the landlord has established a claim for unpaid rent for the month of February, 2011 in the amount of \$1,150.00 as well as loss of revenue for the following month. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The landlord currently holds in trust a security deposit in the amount of \$475.00. The landlord requested during the hearing permission to retain the security deposit. In the circumstances, I find that any monetary award against the tenant ought to be set off

from any amount due to the tenant, and pursuant to my authority under Section 72 (2) (b) of the *Residential Tenancy Act*, I find that the landlord is entitled to that claim.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. The tenant must be served with the Order of Possession. If the landlord serves the order on the tenant and the tenant fails 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 \$475.00 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 \$1,875.00. 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: March 01, 2011.

Residential Tenancy Branch