



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, FF, MNR, MNSD

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 and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing and gave affirmed testimony. The landlord testified that the tenant moved from the rental unit at "midnight" on February 16, 2011, and left no forwarding address.

The landlord also advised that his original application had contained an application for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; and for an order permitting the landlord to retain the security deposit or pet damage deposit but was advised by the Residential Tenancy Branch staff to amend his application to delete those applications. The landlord did so on that advice, but requests a monetary order for unpaid rent or utilities and to keep the security deposit in partial satisfaction of that claim. In the circumstances set out in this Decision, I find that the tenant would not be prejudiced by the amendment, and on the application of the landlord, I order that the application be amended to include an application for a monetary order for unpaid rent and for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim.

The landlord testified that he filed for dispute resolution on February 14, 2011 and posted the Landlord's Application for Dispute Resolution and notice of hearing documents to the door of the rental unit on February 17, 2011. In the circumstances, I find that the documents are deemed to have been sufficiently served 3 days after that posting, or on February 20, 2011, pursuant to Sections 89 (2) (d) and 71 (2) (b) of the *Residential Tenancy Act*. The tenant did not attend the conference call hearing.

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?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on August 1, 2010 and ended on February 16, 2011 when the tenant vacated the unit in the middle of the night. Rent in the amount of \$1,450.00 per month was payable in advance on the 1st day of each month. On July 9, 2010 the landlord collected a security deposit from the tenant in the amount of \$725.00.

The landlord stated that he was away in mid-December, 2010 and had told the tenant that his nephew would collect the rent for the month of January, 2011. His nephew subsequently told the landlord that he tried to call the tenant several times on her cell phone but she did not answer and he did not collect any rent. The landlord returned on January 12, 2011 and contacted the tenant who advised that she didn't have the rent money but would have it by the weekend. On the weekend the tenant called the landlord to advise she only had \$500.00 of the rent, which was paid to the landlord.

On January 17, 2011 the landlord visited the tenant and the tenant gave to the landlord her notice to vacate the unit by February 15, 2011, a copy of which was provided in advance of the hearing. The note also acknowledges owing rent in the amount of \$950.00 for the month of January, 2011, and she gave him another \$250.00 in cash. The landlord claims \$700.00 for the unpaid portion of January's rent as well as \$1,450.00 for February's rent, and the \$50.00 filing fee for the cost of this application.

The landlord also testified that the rental unit is now in a state requiring repairs including, but not limited to replacing the front door that has been kicked in.

Analysis

The *Residential Tenancy Act* requires that an application by a landlord for an Order of Possession must be served by personally leaving it with the tenant, by sending it by registered mail to the address at which the tenant resides, by leaving it at the tenant's residence with an adult who apparently resides with the tenant, by attaching it to the door or other conspicuous place at the tenant's residence, or as ordered by the director. The *Act* also states that an application for any other order, including a monetary order, must be served by leaving a copy with the tenant, by sending a copy by registered mail to a forwarding address provided by the tenant, or as ordered by the director, but does not include leaving it at the tenant's residence with an adult who apparently resides with the tenant or by attaching it to the door or other conspicuous place at the tenant's residence. The tenant has not provided a forwarding address, and I accept the evidence of the landlord that the tenant moved out in the middle of the night. I therefore

find that service of the Landlord's Application for Dispute Resolution with respect to the monetary order requested has been sufficiently served pursuant to my authority under Section 71 (2) (b) of the *Residential Tenancy Act*.

I have no evidence before me that the landlord served the tenant with notice end the tenancy for unpaid rent or utilities, but I do have evidence that the tenant gave notice to end the tenancy effective February 15, 2011, is no longer residing in the rental unit, and as such, I find that the landlord is entitled to an Order of Possession.

I further find that the tenant abandoned the rental unit on February 16, 2011 without providing a forwarding address to the landlord. Having found that the tenant is deemed to have been served with the Landlord's Application for Dispute Resolution and notice of hearing documents on February 20, 2011, I also find that the tenant has had sufficient notice of the landlord's claim for unpaid rent, and I find that the landlord has established a claim in the amount of \$2,150.00 in unpaid rent.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord. If the tenant is served with the order and 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 \$725.00 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 \$1,475.00. 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 04, 2011.

Residential Tenancy Branch