



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MND, MNR, MNSD, 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 a monetary order for damage to the unit, site or property; for an order permitting the landlord to retain all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application.

The landlord company was represented by an agent and called a witness who both gave affirmed testimony. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on February 24, 2011, the tenant did not attend.

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 a monetary order for damage to the unit, site or property?
Is the landlord entitled to retain all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

This fixed-term tenancy began on September 15, 2010. A tenancy agreement was signed by the parties but contains an error in that it states that the tenancy agreement expires on March 31, 2010. Rent in the amount of \$625.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$312.50.

The landlord's agent testified that the tenant failed to pay rent when it was due for the month of February, 2011 and on February 2, 2011 the tenant was served with a 10 Day

Notice to End Tenancy for Unpaid Rent or Utilities by posting both pages of the notice to the door of the rental unit. That notice is dated February 2, 2011 and states that the tenant failed to pay \$625.00 for rent that was due on February 1, 2011 and contains an expected date of vacancy of February 12, 2011. On February 8, 2011 the tenant paid the landlord \$400.00 and paid the balance of \$225.00 on February 25, 2011. He further stated that receipts were issued for those payments that were marked, "For Use and Occupancy Only."

The landlord's agent further testified that the tenant was late paying rent in January and February, 2011 and the tenancy agreement contains a clause stating that late payments of rent are subject to a \$25.00 late fee. Rent for the month of March is also due, and the landlord has not collected any rent for March, 2011, and therefore the landlord claims \$625.00 for March rent and \$75.00 for late fees.

The landlord's agent also testified that the tenant broke a window during the tenancy, and the landlord paid \$151.36 on January 10, 2011 for that repair, and the tenant agreed to reimburse the landlord for that cost.

Analysis

The *Residential Tenancy Act* states that if a tenant does not pay rent when it is due, the landlord may serve the tenant with a notice to end the tenancy. The tenant then has 5 days from the date the tenant was deemed served with the notice to pay the rent in full 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 and must move by that date.

In the circumstances, I find that the tenant was deemed to be served with the Landlord's Application for Dispute Resolution and notice of hearing documents 5 days after mailing, or March 1, 2011.

I further find that the tenant was deemed to be served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 5, 2011, being 3 days after the notice was posted to the door of the rental unit. The tenant then had until February 10, 2011 to pay the rent in full or apply for dispute resolution. I further find that the effective date of the notice and the date the tenant should have been expected to vacate the rental unit is 10 days from the date the tenant was deemed served, being February 15, 2011. Pursuant to Section 53 of the *Residential Tenancy Act*, I find that the effective date of the notice is automatically changed to the earliest date that does apply. The tenant did not apply for dispute resolution and did not pay the rent in full until February 25, 2011,

and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

I further find that the tenant has failed to pay any rent for the month of March, 2011 and the landlord's claim for one month of rent is justified. I also accept the evidence of the landlord's agent that the tenant failed to pay rent on time in January, February and March, 2011 and therefore the landlord is entitled to late fees for those months in the amount of \$75.00.

I also accept the evidence of the landlord's agent with respect to the broken window and the cost incurred by the landlord for that repair. The landlord is therefore entitled to recover \$151.36 from the tenant.

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 hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. If the tenant is served with the Order of Possession 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 in the amount of \$312.50 and I grant the landlord a monetary order for the balance due of \$588.86. 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 09, 2011.

Residential Tenancy Branch