



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 retain all or a portion 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 company was represented by an agent who gave affirmed testimony and provided an evidence package in advance of the hearing. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail in separate mailings for each of the tenants on February 22, 2011, neither of the tenants attended the conference call hearing.

At the outset of the hearing, the landlord's agent stated that the tenants vacated the rental unit on March 3, 2011 and therefore the application for an Order of Possession is withdrawn, and I dismiss that portion of the landlord's application.

All information and testimony 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 an order permitting the landlord to retain all or a portion 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

This month-to-month tenancy began on May 1, 2010 with the male tenant, who accepted an assignment by the previous tenant. The female tenant moved into the rental unit on August 18, 2010. The landlord's agent testified that the tenants moved out of the rental unit on March 3, 2011 leaving the doors open, which caused the water pipes to freeze.

The landlord's agent further testified that rent in the amount of \$810.00 per month was payable in advance on the 1st day of each month. On October 16, 2009 the landlord collected a security deposit from the previous tenant in the amount of \$400.00 and that security deposit was assigned to the male tenant at the commencement of his tenancy, being May 1, 2010.

The landlord's agent further testified that the tenants failed to pay rent when it was due in February, and on February 2, 2011 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. That notice, a copy of which was provided in advance of the hearing states that the tenants failed to pay rent in the amount of \$810.00 that was due on February 1, 2011, the notice is dated February 2, 2011 and contains an expected date of vacancy of February 12, 2011.

On February 21, 2011 the tenants paid the landlord's agent \$440.00 towards February's rent, for which a receipt was issued that had clearly marked "For Use and Occupancy Only." A balance of \$370.00 is still outstanding for February's rent, and the landlord claims \$810.00 for March's rent as well.

Analysis

The *Residential Tenancy Act* states that if a tenant does not pay rent when it is due, the landlord may issue a notice to end the tenancy. The tenant then has 5 days 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. In this case, the tenants did not move out of the rental unit on the effective date of the notice and did not dispute the notice. Therefore, I find that the landlord is entitled to recover \$370.00 for outstanding rent for the month of February, 2011 as well as \$810.00 for the month of March. I also find that the landlord is entitled to retain the security deposit in partial satisfaction of the claim for unpaid rent. 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, the landlord's application for an Order of Possession is hereby dismissed as withdrawn by the landlord.

I order that the landlord retain the security deposit and interest of \$400.00 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 \$830.00. 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 10, 2011.

Residential Tenancy Branch