



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

OPR, OPB, MN, FF, O

Introduction

This hearing dealt with the landlords' application for an Order of Possession for unpaid rent and breach of an agreement with the landlords and a Monetary Order for unpaid rent. The landlords appeared at the hearing but the tenant did not. The landlords provided a copy of the registered mail receipt as proof of service of the hearing documents and testified that a search of the tracking number revealed that the registered mail was picked up March 23, 2011. I was satisfied the tenant was sufficiently served with the hearing documents and I proceeded to hear from the landlords without the tenant present.

On a procedural note, the landlords had named two tenants in filing this application. However, the landlords testified that only one of the respondents was a tenant under the tenancy agreement. I confirmed this statement to be accurate upon review of the tenancy agreement and I have amended the application to name only that respondent. Accordingly, this decision and the orders that accompany it name only one tenant.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

The month to month tenancy commenced December 1, 2010 and the tenant is required to pay rent of \$2,300.00 on the 1st day of every month. On February 10, 2011 the parties participated in a dispute resolution hearing (file no. 766854) to hear the tenant's application to cancel a Notice to End Tenancy. The Dispute Resolution Officer recorded that the parties settled the dispute with the agreement the tenant would pay \$5,893.00 to the landlords in three instalments during the month of February 2011.

During this hearing, the landlords testified that the tenant did not make the payments as agreed upon. On March 2, 2011 the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent. The Notice indicates the amount outstanding as \$8,193.00 being the sum of the amount agreed upon at the February 2011 hearing and the rent for March 2011. The tenant did not pay any of the outstanding rent and did not dispute the Notice.

The landlords testified that the amount of \$5,893.00 recorded in the previous dispute resolution decision included an amount of \$1,150.00 for a security deposit that was not paid.

The landlords also testified that they have not personally seen the tenant at the rental unit since February 17, 2011 although some furniture, clothing and food remains at the rental unit, the tenant has not returned the keys to them, and Notices they have posted to the door have been removed. The landlords have yet to determine whether the tenant has abandoned the rental unit and requested an Order of Possession to ensure they regain possession of the rental unit.

In making this application, the landlords were seeking compensation of \$8,193.00 and have sought to amend the claim to \$10,493.00 to include unpaid rent for April 2011. The landlords stated that they posted the amended application to the rental unit door and the amended application has since been removed from the door.

Documentary evidence considered for this hearing was a copy of the decision issued under file no. xxxxxx; the tenancy agreement; 10 Day Notice to End Tenancy issued March 2, 2011; proof of service of the hearing documents; and, the amended application.

Analysis

Upon review of the decision issued for the previous dispute resolution proceeding I find the tenant and the landlords had an agreement whereby the tenant would pay three instalments to satisfy the rent owed up to February 2011 and the security deposit. In the absence of evidence to the contrary, I accept that the tenant did not fulfill those terms. Accordingly, I accept that the tenant breached an agreement with the landlord.

I am also satisfied that the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 2, 2011 and the tenant did not dispute the Notice or pay the outstanding rent. Where a tenant receives a 10 Day Notice and does not pay the rent or dispute the Notice within five days of receiving it, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice.

In light of the above, I find that the tenancy has come to an end and that the landlords are entitled to regain possession of the rental unit. With this decision I provide the landlords an Order of Possession effective two (2) days after service upon the tenant. The Order of Possession may be enforced in The Supreme Court of British Columbia as an Order of that court.

I have accepted the landlords' request for amendment as I accepted that they posted the amended application on the tenant's door, that the tenant has received the amended application and that the tenant has failed to return possession of the rental unit to the landlords. Although service of the amended application does not comply with the requirements of section 89 of the Act, I deem service to be sufficient in accordance with section 71 of the Act. In light of the above, I award the landlords loss of rent for the month of April 2011.

The previous decision recorded an amount of \$5,893.00 payable to the landlords by the tenant; however, that amount included the security deposit. Since the tenancy has ended, I do not order payment of the security deposit by the tenant. Accordingly, the amount awarded to the landlord is reduced by \$1,150.00. I find the landlords entitled to recover the following amounts from the tenant:

Unpaid rent and security deposit up to February 2011	\$ 5,893.00
Less: security deposit	(1,150.00)
Plus: unpaid rent for March 2011	2,300.00
Plus: loss of rent for April 2011	2,300.00
Plus: filing fee paid for this application	<u>100.00</u>
Total Monetary Order	\$ 9,443.00

The landlords must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as an Order of that court.

The landlords remain at liberty to make a subsequent application for any damages the tenant may have caused to the rental unit.

Conclusion

The landlords have been provided an Order of Possession effective two (2) days after service upon the tenant. The landlords have been provided a Monetary Order in the amount of \$9,443.00 to serve upon the tenant.

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: April 07, 2011.

Residential Tenancy Branch