



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; strata fines and move-in fees; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord provided registered mail receipts as proof of service of the hearing documents sent to the tenants at the rental unit on May 16, 2011. The landlord testified that the tenants appear to have vacated the rental unit and new occupants have moved in. The landlord testified that the tenants had not notified the landlord that they were vacating the unit, nor did the tenants get authorization to sublet the unit, and did not provide a forwarding address to the landlord.

Section 89 provides for special rules for service of hearing documents upon a respondent. When a respondent is served by registered mail the mail is to be sent to the address of residence of the tenant or the forwarding address of the tenant. Section 71 of the Act also provides that the director may make orders that a document has been sufficiently served even if not given in accordance with section 89 of the Act.

Based upon the landlord's testimony, I accept that the tenants have vacated the rental unit but gave access to the unit to other occupants and that the landlord has no knowledge of the tenants' whereabouts. Therefore, in the circumstances presented to me, I order that the tenants were sufficiently served with the hearing documents by registered mail sent to the rental unit on May 16, 2011.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent, a move-in fee, and a strata fine?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The fixed term tenancy commenced July 18, 2010 with a term set to expire July 31, 2011. The tenants paid a \$550.00 security deposit and are required to pay rent of \$1,100.00 on the 1st day of every month.

Rent was not paid for April 2011 and on April 30, 2011 the owner and the landlord's agent posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit. The Notice indicates rent of \$1,100.00 was outstanding as of April 1, 2011.

After posting the Notice the new occupants contacted the landlord and told the landlord they had paid rent and a security deposit to the tenant who was posing as the owner of the property. The landlord believes the new occupants have been residing in the unit since approximately December 2010 but the landlord was not aware that the tenants had vacated until contacted by the new occupants since the rent had continued to be paid by the tenants up to and including the month of March 2011.

Rent continues to be outstanding for April 2011 but the landlord has accepted monies for "use and occupancy" only from the new occupants for the months of May and June 2011. The landlord requested an Order of Possession effective June 30, 2011.

In addition to the rent owed for April 2011 the landlord provided verbal testimony that the tenants also owe a \$300.00 move-in fee and \$100.00 for a strata violation.

Provided as documentary evidence for this proceeding was a copy of the tenancy agreement, Notice to End Tenancy, and registered mail receipts.

Analysis

Section 88 of the Act provides for ways a Notice to End Tenancy may be served upon a tenant. A Notice may be posted on the door at the address where the person resides. Although the tenants may not have been residing at the rental unit on April 30, 2011 given the circumstances described earlier in this decision, I order that the 10 Day Notice was sufficiently served upon the tenants on May 3, 2011 pursuant to section 71 of the Act. Accordingly, the effective date on the Notice is automatically changed to read May 13, 2011 pursuant to section 53 of the Act.

Where a tenant is served a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the

tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenants did not pay the outstanding rent or dispute the Notice I find the tenancy ended on May 13, 2011. Although the landlord has collected monies after May 13, 2011, based upon the landlord's undisputed verbal testimony, I did not find that the tenancy was reinstated or that a new tenancy agreement formed with the current occupants of the rental unit. It is important to note that tenants, and not occupants, have rights and obligations with respect to a rental unit and tenancy agreement.

In light of the above, I find the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective June 30, 2011. I order that the Order of Possession may be served upon the tenants by posting it on the door of the rental unit. If the tenants do not comply with the Order of Possession the landlord may enforce it in The Supreme Court of British Columbia as an Order of that court.

I find the landlord entitled to recover unpaid rent for the month of April 2011 in the amount of \$1,100.00. However, I find the landlord failed to provide sufficient documentary evidence that a move-in fee or a strata fine is payable by the tenants and I dismiss that portion of the landlord's claim.

I authorize the landlord to retain the security deposit in partial satisfaction of the rent owed and I award the \$50.00 filing fee to the landlord. Accordingly, I provide the landlord with a Monetary Order for the balance of \$600.00 to serve upon the tenants. The Monetary Order must be served upon the tenants and may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The tenancy has ended and the landlord is provided with an Order of Possession effective June 30, 2011. The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$600.00 to serve upon the tenants.

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: June 07, 2011.

Residential Tenancy Branch