



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 keep all or part of the pet damage deposit or security deposit; 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. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on April 15, 2011 the tenants did not attend the conference call hearing. All evidence and testimony provided has been reviewed and is considered in this Decision.

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 keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on January 1, 2008 and the tenants still reside in the rental unit. Rent in the amount of \$618.33 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 tenants in the amount of \$287.50. No pet damage deposit was collected.

The landlord's agent testified that the tenants failed to pay rent when it was due for the month of April, 2011, and consequently the landlord's agent served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on April 4, 2011. A copy of the notice was provided in advance of the hearing, and it is dated April 4, 2011 and contains an expected date of vacancy of April 14, 2011. The notice also states that the tenants failed to pay rent in the amount of \$618.33 that was due on the 1st day of April, 2011, and both pages have been provided. The landlord's agent also provided a proof of service document, witnessed by an independent person to support that evidence.

The landlord's agent further testified that the tenants have not yet paid any rent for the month of May, 2011, and the landlord requests an Order of Possession and a monetary order for \$1,236.66 for two month's rent, in addition to the \$50.00 filing fee for the cost of this application. She further stated that the tenancy agreement provides for late fees in the amount of \$25.00 for each late rent payment, although the company actually charges \$20.00 for each late payment, and the landlord is requesting a monetary order for \$40.00.

The landlord's agent further testified that an altercation took place at the rental unit between the male tenant and another unknown male person, wherein the door to the rental unit was damaged. The extent of the damages is unknown, but the landlord states that the maintenance person for the complex has advised that it will likely cost in excess of \$250.00.

Analysis

I am satisfied in the evidence before me that both tenants have been served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on April 15, 2011.

I am further satisfied that the landlord has established a claim for unpaid rent for the months of April and May, 2011, in addition to the \$40.00 late fee and \$50.00 filing fee for the cost of this application.

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, then on any day after the day rent is payable the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. 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 presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, I find that since the landlord's agent served the notice to end the tenancy by posting it to the door of the rental unit, the notice is deemed to have

been served 3 days after that, or April 7, 2011. The effective date of the notice is therefore deemed to be April 17, 2011. The *Act* further states that incorrect dates on a notice to end a tenancy are automatically corrected to the soonest date that complies with the *Act*, and I find that date to be April 17, 2011. The tenants have not paid the rent and have not applied for dispute resolution to dispute the notice, and are therefore conclusively presumed to have accepted that the tenancy ended on April 17, 2011. I therefore find that the landlord is entitled to an Order of Possession.

With respect to the landlord's request for an order for damage to the unit, site or property, I find that the application has been made prematurely. The landlord is required under the *Act* to conduct a move-out condition inspection report, and the landlord may find more damages at that time, or may find that the tenant has repaired the damage to the door as required under the *Act*. Therefore, that portion of the application must be dismissed.

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 tenants. The landlord must serve the Order of Possession on the tenants. If the landlord serves the Order of Possession on the tenants and the tenants fail 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 the landlord to retain the security deposit in the amount of \$287.50 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$1,039.16, which includes recovery of the \$50.00 filing fee for the cost of this application and \$40.00 in late fees.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

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: May 11, 2011.

Residential Tenancy Branch