



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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 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 tenant for the cost of this application.

An agent for the landlord company attended a previous conference call hearing on May 4, 2011 which was adjourned to today. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on April 11, 2011, the tenant did not attend. The landlord's agent was also permitted to fax evidence to the Residential Tenancy Branch which she stated was faxed previously but was not received by the Dispute Resolution Officer prior to the May 4, 2011 hearing.

The landlord company was represented by an agent at today's hearing who gave affirmed testimony and provided the evidence in advance of the hearing. However, despite being served with the notice of hearing documents by regular mail by the Residential Tenancy Branch, tenant again failed to attend. 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 keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

This fixed-term tenancy began on March 1, 2010 and expired on August 31, 2010 and then reverted to a month-to-month tenancy. Rent in the amount of \$885.00 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 \$442.50.

The landlord's agent testified that the tenant failed to pay rent when it was due in February, March, April and May, 2011. The tenancy agreement also provides for a late fee in the amount of \$20.00 for rent payments in arrears longer than 7 days. The tenant paid \$600.00 toward February's rent on March 5, 2011 and paid another \$305.00 on April 1, 2011 which the landlord applied to the unpaid rent for February and a \$20.00 late fee. Then on April 21, 2011 the tenant paid a full month's rent of \$885.00 which the landlord applied to the overdue rent for March, 2011. On May 6, 2011 the tenant paid \$885.00 which was applied to the rent for April, 2011, leaving a balance outstanding of \$885.00 for May's rent, \$20.00 for a late fee for March, a late fee for April and a late fee for May. A copy of the tenancy agreement was also provided.

The landlord's agent further testified that on February 8, 2011 the landlord's employee personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. The notice is dated February 8, 2011 and contains an expected date of vacancy of February 18, 2011. Only one page of the 2 page form has been provided, however, the landlord's agent testified that both pages were served, and that she personally re-served both pages on the tenant on May 5, 2011 by sliding them under the door of the rental unit.

Analysis

The *Residential Tenancy Act* states that a landlord may serve a tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on any day after rent is payable. 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, which is 10 days after the tenant receives the notice, and the tenant must move out.

In this case, I accept the evidence of the landlord's agent that the tenant was personally served with the notice to end tenancy on February 8, 2011. The tenant has not disputed the notice and did not pay the outstanding rent within the 5 days required under the *Act*, and therefore, I find the landlord is entitled to an Order of Possession.

With respect to the monetary order, I am satisfied in the evidence before me that the tenant is in arrears \$885.00 for one month of rent, in addition to \$60.00 in late fees, and the landlord is entitled to a monetary order in the amount of \$945.00. I do not find that the landlord is entitled to the claim for an additional \$20.00 in late fees because the tenant paid for that on April 1, 2011.

Since the landlord has been successful with this claim, 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. The landlord must serve the tenant with a copy of the Order of Possession. If the landlord serves a copy on the tenant, and the tenant 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 the landlord to retain the security deposit in the amount of \$442.50 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance of \$552.50. 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: May 13, 2011.

Residential Tenancy Branch