Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MNR

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 and a monetary order for unpaid rent or utilities.

The landlord attended the conference call hearing, 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 posting them to the door of the rental unit on April 19, 2011, neither tenant attended. 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?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 1, 2011, and the tenants still reside in the rental unit. Rent in the amount of $1,500.00 per month is payable in advance on the 1st day of each month. The tenants were also required to pay a security deposit in the amount of $750.00.

The landlord also testified that at the outset of the tenancy, the tenants paid him $2,250.00 for the security deposit and first month's rent, but the cheque was returned by his bank on April 6, 2011 marked N.S.F.

On April 8, 2011, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting the notice to the door of the rental unit. The notice states that the tenants failed to pay $1,500.00 for rent due for the month of April, 2011, and contains an expected date of vacancy of April 18, 2011.

On April 30, 2011 the landlord served a 24 hour notice of intent to inspect the rental unit on May 1, 2011. The tenants would not allow the landlord entry and had a dog that also prevented the landlord from entering, until the police attended. The landlord testified that the dog is a mean dog, and he has therefore been unable to serve the tenants personally with any notices or the application. He stated that the tenants refuse to answer the door when he attends at the rental unit, and provided a photograph of the dog in advance of the hearing.

The landlord testified that the tenants have not paid any of the rent, nor has the landlord been served with an Application by the tenants disputing the notice. The landlord requests an Order of Possession and a monetary order in the amount of $3,050.00 for rent for April and May, 2011 and recovery of the $50.00 filing fee for the cost of this application.

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 date after the date rent is payable, and the tenants then have 5 days to dispute the notice or pay the rent in full. If the tenants do not dispute the notice or pay the rent in full within 5 days, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The *Act* also specifies that documents that are served by posting them to the door of the residence are deemed to be served 3 days after such posting. Therefore, I find that the tenants were deemed to have been served on April 11, 2011 and the effective date of the notice is therefore April 21, 2011. The *Act* further states that incorrect dates in a notice are automatically changed to the soonest date that complies with the *Act*. In this case I find that the effective date of the notice is automatically changed to April 21, 2011. I further find that the tenants have not disputed the notice and have not paid the rent in full and are therefore conclusively presumed to have accepted that the tenancy ended on April 21, 2011. I therefore find that the landlord has established a claim for an Order of Possession, and I hereby grant an order on 2 days notice to the tenants.

With respect to the landlord's application for a monetary order for unpaid rent, I find that the landlord has not complied with Section 89 as it relates to service of the Landlord's Application for Dispute Resolution. I accept the evidence of the landlord that the tenants refuse to answer the door and the dog prevents him from entering even after giving the required 24 hours notice, however, the *Act* requires that if the landlord makes an application for an order that is not an Order of Possession, the application must be

served by registered mail or personally on each of the tenants. This applies to an application for a monetary order. Because the tenants have refused the landlord entry and have a guard dog that prevents entry unless the police attend, I grant leave for the landlord to reapply for the monetary order. Since the landlord has been partially successful with the application, 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 tenants must be served with the Order of Possession. If the tenants are served with the Order of Possession and 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.

The landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed with leave to reapply.

I hereby grant a monetary order in favour of the landlord in the amount of $50.00 for recovery of the filing fee for the cost of this application. 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 18, 2011.

Residential Tenancy Branch