



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 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing and gave affirmed testimony, however, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on May 6, 2011, the tenant did not attend. The testimony and paper evidence provided by the landlord 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

The landlord testified that this tenancy began on November 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$850.00 per month is payable in advance on the 1st day of each month, although there is no written tenancy agreement. At the outset of the tenancy, the landlord collected a security deposit in the amount of \$425.00 and no pet damage deposit was collected.

The landlord further testified that the tenant did not pay rent for the month of February, 2011. On March 8, 2011 the landlord issued 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 states that the tenant failed to pay rent in the amount of \$850.00 that was due on February 1, 2011 and that the tenant failed to pay utilities in the amount of \$158.08 following written demand on February 15, 2011, and contains an expected date of vacancy of March 19, 2011. The landlord testified that the notice was served on the tenant personally on March 8, 2011. She also stated that the tenant paid the rent for the month of March, 2011 around the middle of March, and paid the full month of rent for April, leaving February's rent and the utilities unpaid.

The landlord then issued another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 25, 2011, a copy of which was also provided in advance of the hearing. That notice states that the tenant failed to pay rent in the amount of \$850.00 that was due on February 1, 2011 and the tenant failed to pay utilities in the amount of \$814.92 following written demand on April 24, 2011 and contains an expected date of vacancy of May 5, 2011. The landlord testified that the second notice was served by posting it to the door of the rental unit on April 25, 2011. When questioned about the utilities, the landlord testified that the tenant had still not paid \$158.08 following the written demand given on February 15, 2011 and another utility bill was provided to the tenant on April 24, 2011 in the amount of \$656.84. She contacted the utility company, who confirmed that prior utility bills had been estimated, and the utility company had under-estimated; the actual consumption after a meter reading was \$656.84 for that last bill.

The tenant then paid \$379.58 for the month of May, 2011, leaving a balance outstanding of \$470.42 for that month. The landlord provided a cheque stub from a government Ministry which indicates that the payment date was May 25, however the landlord did not testify as to the date the payment was received.

With respect to both notices, the landlord has provided only page 1 of the 2 page form, but testified that both pages were served on the tenant on both occasions, and that the landlord did not provide both pages to the Residential Tenancy Branch because page 2 is a pre-printed form which requires no additional information from the landlord to the tenant, and felt that only the page that the landlord completed was necessary for these proceedings. Also, when questioned about the spelling of the tenant's name, the landlord stated that the notices to end the tenancy have a different spelling than the surname of the tenant on the Landlord's Application for Dispute Resolution from the notices, because the landlord did not know the correct spelling when the notices were issued, but learned of it prior to filing the application.

The landlord claims an Order of Possession for unpaid rent and utilities, a monetary order for \$814.92 for outstanding utilities, a monetary order for \$850.00 for rent for the month of February, 2011, a monetary order for \$470.42 for outstanding rent for the month of May, 2011 and loss of revenue in the amount of \$850.00 for the month of June, 2011. The landlord also stated that an estimate of utilities for half of April and all of the month of June should also be ordered but provided no amount.

Analysis

With respect to the landlord's application for an Order of Possession, I accept the evidence of the landlord that the tenant is in arrears for rent the amount of \$850.00 for the month of February, and \$470.42 for the month of May, 2011 in addition to outstanding utilities. I have reviewed the documentation provided by the landlord, and it's clear in the evidence and the testimony provided that the landlord collected rent in mid-March, 2011, after the issuance of the first notice to end the tenancy. The landlord then collected rent in full for the month of April, and issued another notice to end the tenancy. The landlord also collected rent for the month of May, 2011, but in none of those cases did the landlord issue a receipt that clearly showed the intention that the landlord was collecting that rent for use and occupancy of the rental unit only, and has thereby reinstated the tenancy. I refer to Residential Tenancy Policy Guideline 11, which states as follows:

"If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only,
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties."

In this case the intent of the landlord is in question because the landlord did not act on the first notice and did not issue a receipt for use and occupancy only after collecting rent beyond the effective date of the notice. Therefore, the landlord's application for an Order of Possession cannot succeed. The landlord is clearly at liberty to issue another notice to end the tenancy, however, if the landlord collects rent from the tenant personally or by a government ministry after the effective date of the notice, it is important that the landlord issue a receipt to the tenant to remove any question of implied waiver by writing on the receipt "For Use and Occupancy Only." Further, I

attach a Landlord and Tenant Fact Sheet with respect to “Re-instatement of Tenancies” to assist the parties.

With respect to the landlord’s application for a monetary order, I find that the landlord has established a claim for unpaid rent in the amount of \$1,320.42 and unpaid utilities in the amount of \$814.92. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application. In the event that the landlord again applies for an Order of Possession for unpaid rent or utilities, the landlord must take care to ensure that the Dispute Resolution Officer is aware of this monetary order to prevent another monetary order from being issued for the same unpaid rent and utilities.

Conclusion

For the reasons set out above, the landlord’s application for an Order of Possession for unpaid rent or utilities is hereby dismissed.

I hereby order the landlord to retain the security deposit in the amount of \$425.00 and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$1,760.34. 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 31, 2011.

Residential Tenancy Branch