



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

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidence 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 May 6, 2011, the tenants did not 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?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on April 10, 2010 and the tenants still reside in the rental unit. Rent in the amount of \$750.00 per month is payable in advance on the 1st day of each month, and a pro-rated amount of rent was paid for the first month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$375.00 and no pet damage deposit was collected.

The landlord's agent further testified that the tenants failed to pay rent when it was due for the month of March, 2011. The Ministry had paid the landlord for half of that rent payment on February 14, 2011. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 4, 2011, which was posted to the door of the rental unit the same day. The landlord's agent stated that she provided a copy of the notice to the Residential Tenancy Branch, but no copy appears on the file. The landlord's agent testified that the notice is dated March 4, 2011 and states that the tenants failed to pay rent in the amount of \$375.00 that was due on March 1, 2011 and contains an effective date of vacancy of March 14, 2011. The landlord's agent also gave the tenants a reminder on April 6, 2011 that \$1,125.00 was overdue as at the beginning of April.

On April 14, 2011, the tenants paid \$375.00, which the landlord applied to the balance outstanding for the month of March, leaving the full month of rent outstanding for the month of April, 2011. On May 17, 2011 the tenant paid another \$375.00 which the landlord applied to the outstanding April rent, leaving owing \$375.00 for April and \$750.00 for May, 2011.

The landlord claims an Order of Possession for unpaid rent, a monetary order in the amount of \$1,125.00 for unpaid rent, an order permitting the landlord to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenants for the cost of this application.

Analysis

With respect to the landlord's application for an Order of Possession, I accept the evidence of the landlord that the tenants are in arrears for rent the amount of \$375.00 for the month of April, 2011 and \$750.00 for the month of May, 2011. It's clear in the evidence and the testimony provided that the landlord collected rent in April and again in May, 2011, after the effective date of the notice to end the tenancy but in neither 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 notice to end the tenancy 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 tenants personally or by a government ministry after the effective date of the notice, it is important that the landlord issue a receipt (or some other notice in writing) to the tenants 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 \$1,125.00. 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. I also find that the landlord is entitled to keep the security deposit in the amount of \$375.00 in partial satisfaction of the claim.

Conclusion

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

I order the landlord to keep the security deposit in the amount of \$375.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential tenancy Act* for the balance of \$800.00. 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: June 01, 2011.

Residential Tenancy Branch