



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.

The landlord attended the 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 13, 2011, the tenant did not attend. All evidence and the testimony provided by the landlord have been reviewed and are 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 testified that this tenancy began as a fixed term tenancy on June 1, 2010 with an expiry date of November 30, 2010 after which it became a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$765.00 per month is payable in advance on the 1st day of each month. On June 7, 2010 the landlord collected a security deposit from the tenant in the amount of \$382.50. The tenancy agreement, a copy of which was provided in advance of the hearing, also

stated that the tenant was to pay a pet damage deposit in the amount of \$382.50 by July 15, 2010, however the landlord testified that the tenant did not pay it.

The landlord also testified that the tenant did not pay rent when it was due on March 1, 2011, but paid the landlord \$500.00 on March 4, 2011. The tenant further failed to pay rent when it was due in April, 2011 but the tenant paid the landlord \$500.00 on April 8, 2011 and then another \$300 on April 21, 2011 but that cheque was returned by the bank marked NSF.

The landlord further testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 26, 2011 by posting it to the door of the rental unit. A copy of that notice was provided in advance of the hearing and it is dated April 26, 2011, and states that the tenant failed to pay rent in the amount of \$775.00 that was due on April 26, 2011, and contains an expected date of vacancy of May 9, 2011. Both pages of the form have been provided and the landlord testified that both pages had been served on the tenant. A proof of service document has also been provided by the landlord, which is signed by the landlord and a witness.

The landlord also provided a copy of a tenant ledger in advance of the hearing which shows the tenant in arrears the sum of \$1,865.00 as at May 1, 2011, which includes unpaid rent, parking fees, late fees and NSF fees. The landlord also stated that parking is included in the rent and reduces the claim for the 5 charges in the ledger totalling \$75.00, however the tenant is now in arrears for the month of June, 2011 as well.

The landlord also testified that he served the tenant with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on May 13, 2011 and provided the registration number from Canada Post. He also stated that the tenant served him with notice to end the tenancy on May 31, 2011 effective June 30, 2011.

Analysis

Firstly, with respect to unpaid rent, I have reviewed the landlord's Tenant Ledger and note that the tenant carried a \$5.00 credit as at December 15, 2010, and the landlord has charged one NSF charge of \$25.00 since that date. I accept the evidence of the landlord that the tenant ledger was adjusted to remove parking charges, and I find that the tenant was in arrears of rent the sum of \$1,090.00 when the notice to end the tenancy was issued on April 26, 2011. I have also reviewed the tenancy agreement and find that the parties agreed to a fee of not more than \$25.00 for late payments of rent and NSF charges, plus any amount charged to the landlord by the financial institution. As for the monetary order, I find that the landlord is entitled to an order in the amount of

\$2,645.00, being \$560.00 in arrears as at February 28, 2011, \$265.00 for rent for the month of March, 2011, \$265.00 for rent for the month of April, 2011, \$25.00 for an NSF fee, as well as rent in the amount of \$765.00 for the month of May and \$765.00 for the month of June, 2011, including late fees. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

I also find that the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on April 26, 2011. The *Act* states that the tenant then had 5 days to pay the rent in full or apply for dispute resolution to dispute the notice, or the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The *Act* also states that the tenant is deemed to be served 3 days after the notice is posted to the door of the rental unit, which I find is deemed to have been served on April 29, 2011. I find that the tenant had until May 4, 2011 to dispute the notice or pay the rent in full, or vacate the rental unit within 10 days, or May 9, 2011. The tenant did not dispute the notice and did not pay the rent in full within the 5 days required under the *Act*, and therefore the landlord is entitled to an Order of Possession.

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 tenant. The tenant must be served with the Order of Possession. If the order is served 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 keep the security deposit in the amount of \$382.50 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$2,312.50. 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: June 06, 2011.

Residential Tenancy Branch