



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession with Cause; to keep the security and pet damage deposits; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the tenant in person on August 11th, 2011. The tenant did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on February 26th, 2010. The rent was \$550.00 per month, and the tenant paid a security deposit of \$275.00 and a pet damage deposit of \$150.00.

The landlord testified that the tenant moved out on September 2nd, 2011 without giving notice; that she has not provided a forwarding address, and that she still has personal items in the unit. She said that the tenant has been late paying rent for 9 months and that she flooded the unit, causing damage to the floor; she said that tiles were cracked, and that the whole unit requires cleaning. The landlord said that the tenant did not pay rent for August and September 2011.

Analysis

I accept the landlord's undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*; I am satisfied that the tenant had knowledge of the date scheduled for this hearing.

Section 47(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy with cause does not make an application for dispute resolution within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. Although she still has personal items in the rental unit I am satisfied that the tenant moved out and that the landlord is entitled to an order of possession.

Concerning the landlord's monetary claim for damages, the landlord provided no documentary evidence, such as photographs and receipts, to support the cost of repairs and cleaning and therefore that portion of her application is premature. Section 60(1) of the Act provides for a landlord to make an application for dispute resolution over matters related to the tenancy within two years after the tenancy ends. The landlord is entitled to claim monetary compensation against the tenant for any damages alleged, and to submit evidence at that time.

I do accept, however that the tenant did not pay rent for August and that she left on September 2nd, and that accordingly the landlord is entitled to recover the loss of rental income for these two months.

Conclusion

I grant the landlord an Order of Possession effective immediately. If necessary, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$1100.00. I authorize the landlord to retain the tenant's combined \$425.00 for the security and pet damage deposits for a balance owing of \$675.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$725.00.

This Order may be registered in the Small Claims Court 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: September 13, 2011.

Residential Tenancy Branch