



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call this date in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application. Two agents for the landlord company attended the hearing, provided evidence in advance of the 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 August 19, 2011, the tenant 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?

Background and Evidence

This tenancy began as a fixed term tenancy on August 24, 2009 and ended on August 31, 2010 and then reverted to a month-to-month tenancy until the parties entered into another fixed term on September 30, 2010. That fixed term commenced on October 1, 2010 and expired on March 31, 2011. A copy of the latter tenancy agreement was provided in advance of the hearing. The landlord's agent testified that the tenant was to vacate the rental premises on March 31, 2011 but would not move out. The landlord did not apply for an Order of Possession at that time, and the tenancy reverted to a month-to-month tenancy.

Rent in the amount of \$1,000.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$500.00.

The landlord's agent further testified that the tenant had been in arrears of rent but arrears had been caught up by the tenant by the end of June, 2011. During the month of July, 2011, the tenant did not pay rent when it was due and the landlord's agent personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was also provided in advance of the hearing. The tenant then paid \$500.00 on July 15, 2011 and an additional \$100.00 on July 19, 2011, leaving a balance due of \$400.00. The tenant further failed to pay rent when it was due for the month of August, 2011 and on August 8, 2011 the landlord's agent personally served the tenant with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. The notice is dated August 8, 2011 and contains an expected date of vacancy of August 18, 2011. The notice also states that the tenant failed to pay rent in the amount of \$1,000.00 that was due on August 1, 2011. The landlord's agent testified that the amount is in error because the tenant also still owed \$400.00 for July's rent. The tenant has not paid any rent for the month of September, 2011 and is currently in arrears \$2,400.00.

The tenant sent the landlord's agent a text message stating that the tenant had filed an application with the Residential Tenancy Branch however the landlord's agents have not been served with any such application. The landlord's agent believes the tenant has vacated the rental unit, however does not believe that all belongings have been moved. The registered mail sent to the tenant by the landlord's agent that contained the Landlord's Application for Dispute Resolution, notice of hearing and evidence was returned to the landlord by Canada Post marked "unclaimed," and the landlord is not aware of the whereabouts of the tenant.

The landlord claims an Order of Possession for unpaid rent as well as a monetary order in the amount of \$2,400.00 in addition to recovery of the \$50.00 filing fee for the cost of this application. Although the landlord's application does not contain an application for an order permitting the landlord to keep the security deposit, the landlord asked at the hearing for the order pursuant to Section 72 (2) of the *Residential Tenancy Act*.

Analysis

Based on the testimony of the landlord's agents, I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim for \$2,400.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee.

With respect to the request of the landlord's agent to keep the security deposit in partial satisfaction of the claim for unpaid rent, I refer to Section 72 (2) of the *Residential Tenancy Act* and Residential Tenancy Policy Guideline #17, "Security Deposit and Set Off," which state as follows:

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
- (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

And:

"17. Security Deposit and Set Off

SET-OFF

The *Residential Tenancy Act* provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the arbitration fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord."

Therefore, I find that the request made by the landlord's agent is provided for in the *Act* and the policy guidelines, and I so order that the landlord be permitted to retain the security deposit in partial satisfaction of the claim.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the landlord. The tenant must be served with the Order of Possession. Should the tenant 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.

I further order that the landlord retain the security deposit and interest of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,950.00. 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: September 21, 2011.

Residential Tenancy Branch