



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call 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, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidence in advance of the hearing. The landlord provided evidence that the tenant was served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on August 24, 2011, however, the tenant did not attend. All evidence and the testimony provided 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?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on February 6, 2010 and expired 6 months after and then reverted to a month-to-month tenancy. Rent in the amount of \$700.00 per month is payable in advance on the 1st day of each month and the landlord collected a pro-rated amount of rent for the 1st month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00.

The landlord's agent further testified that the tenant failed to pay rent when it was due for the month of July, 2011. The tenant further failed to pay rent for the month of

August, 2011, and on August 9, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting a copy of the 2-page form to the door of the rental unit, a copy of which was provided in advance of the hearing. The notice is dated August 9, 2011 and states that the tenant failed to pay rent in the amount of \$1,450.00 that was due on August 1, 2011. The effective move-out date contained in the notice is August 19, 2011.

The landlord's agent further testified that the tenancy agreement, a copy of which was also provided in advance of the hearing, specifies that late payments are subject to a \$25.00 late fee.

The tenant has further failed to pay rent for the month of September, 2011, and the landlord claims a monetary order in the amount of \$2,175.00 for unpaid rent and 3 late payments, as well as an Order of Possession. The landlord further requests to be permitted to keep the security deposit in partial satisfaction of the claim. The tenant has not paid any of the outstanding arrears or late payments, and the landlord has not been served with a Tenant's Application for Dispute Resolution disputing the notice to end tenancy.

Analysis

I am satisfied that the tenant was served in accordance with the *Residential Tenancy Act*.

The *Residential Tenancy Act* states that if a tenant does not pay rent when it is due, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once served, the tenant must pay the rent in full within 5 days, in which case the notice has no effect, or dispute the notice within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice which must be 10 days after service. In this case, the landlord's agent testified that the tenant was served with the notice by posting it to the door of the rental unit on August 9, 2011. The *Act* states that a document serviced in such a manner is deemed to have been served 3 days after such posting, which I find is August 12, 2011. The tenant then had until August 17, 2011 to pay the rent in full or dispute the notice. The evidence of the landlord's agent is that the tenant did not pay the outstanding rental arrears, the landlord has not been served with a Tenant's Application for Dispute Resolution and the tenant is now further in arrears than when the Landlord's Application for Dispute Resolution was filed.

The *Act* also specifies that incorrect dates on a notice to end tenancy are automatically changed to the earliest date that complies with the *Act*. I find that the effective date of

the notice ought to read August 22, 2011, and the notice is hereby deemed to be changed to reflect that date.

I accept the evidence of the landlord's agent, and I find that the tenant is in arrears of rent the sum of \$2,100.00, the landlord is entitled to recovery of \$75.00 for late fees as provided for in the tenancy agreement, and the landlord is entitled to an Order of Possession.

Since the landlord has been successful with this claim, I find that the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

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 tenant is served with the Order of Possession and 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 retain the security deposit in the amount of \$350.00 in partial satisfaction of the claim and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$1,875.00. 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 23, 2011.

Residential Tenancy Branch