



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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 and for a monetary order for unpaid rent or utilities.

A Decision was rendered by a Dispute Resolution Officer on June 20, 2011 by way of the Direct Request process which was corrected on June 27, 2011 and subsequently set aside by the Supreme Court of British Columbia after a Judicial Review hearing, which ordered a new hearing by the Residential Tenancy Branch. This hearing is the re-hearing as ordered by the Court.

The landlord attended the conference call re-hearing, however, despite being notified by Registered Mail of today's hearing by the Residential Tenancy Branch, neither of the tenants attended. The line remained open while the phone system was monitored for ten minutes before any testimony was taken and no participant for the tenants called into the hearing during this time.

The landlord provided evidence in advance of the hearing, and testified that the evidence was also provided to the tenant. Service of the evidence was effected by a Bailiff who also provided an Affidavit of Personal Service. The landlord also gave affirmed testimony. 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?

Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2010, and the tenants still reside in the rental unit. Rent in the amount of \$1,500.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$750.00. A pet damage deposit was also collected however the landlord was not able to testify to the exact amount.

The landlord further testified that the tenant failed to pay rent when it was due for the month of June, 2011. The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on June 3, 2011. The landlord has provided a copy of the 2 page notice as well as a Proof of Service document which was witnessed by the landlord's spouse. Also provided was a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which is dated June 3, 2011 and contains an effective date of vacancy of June 13, 2011. The notice states that the tenants failed to pay rent in the amount of \$1,500.00 that was due on June 1, 2011.

The landlord further testified that the tenant has not paid any rent for the months of June, July, August or September, 2011 and requests an Order of Possession for unpaid rent and a monetary order in the amount of \$6,000.00.

Analysis

In the circumstances, I note that only one of the two named tenants applied for Judicial Review, and the resulting Decision of the Supreme Court applies only to that tenant. Today's re-hearing was held on the Application filed by the landlord in June, 2011, which names both tenants. The notice of hearing sent by the Residential Tenancy Branch was not sent to both tenants, only to the tenant who had applied for Judicial Review. I am satisfied that both tenants were served by the landlord with the Landlord's Application for Dispute Resolution but I am not satisfied that the other tenant had notice of today's hearing. For that reason, I find that, pursuant to Section 67 of the *Residential Tenancy Act*, any monetary order resulting from this Decision applies only to the tenant who was served.

The *Residential Tenancy Act* states that if the tenant does not pay rent when it is due, the landlord may issue a notice to end the tenancy. Once served, the tenant has 5 days to pay the rent in full, in which case the notice is of no effect, or apply for dispute resolution to dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In the circumstances, I find that the tenant was deemed to have been served with the notice 3 days after posting it to the door of the rental unit, or on June 6, 2011. The tenant did not pay the outstanding rent or apply for dispute resolution by June 11, 2011. I further find that the effective date of the notice, or the date the tenant is expected to vacate the rental unit, ought to be June 16, 2011. Pursuant to Section 52 of the *Residential Tenancy Act*, I find that the effective date of the notice is automatically changed to the earliest date that complies with the *Act*, which is June 16, 2011.

I further find that the landlord is entitled to an Order of Possession.

As for the monetary order, I also find that the landlord has established a claim for unpaid rent for the months of June, July, August and September, 2011 in the amount of \$6,000.00. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The landlord currently holds in trust a security deposit in the amount of \$750.00. The landlord requested during the hearing permission to retain the security deposit. In the circumstances, I find that any monetary award against the tenant ought to be set off from any amount due to the tenant, and pursuant to my authority under Section 72 (2) (b) of the *Residential Tenancy Act*, I find that the landlord is entitled to that claim.

The *Residential Tenancy Act* also states that a landlord may only claim against a pet damage deposit for damage caused by a pet. No damage claim caused by a pet has been made by the landlord, and therefore I decline to make any orders with respect to the pet damage deposit.

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 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 keep the security deposit of \$750.00 and I grant a monetary order in favour of the landlord as against one of the tenants in the amount of \$5,300.00. 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 30, 2011.

Residential Tenancy Branch