



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, and FF
Tenants: CNR, AS and RR

Introduction

This hearing was convened on applications by both the landlords and the tenant.

By application dated February 9, 2012, the landlords sought an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on February 2, 2012. The landlords also sought a Monetary Order for the unpaid rent, and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By prior application of February 3, 2012, the tenant sought to have the Notice to End Tenancy set aside, authorization to assign or sublet the rental unit and a rent reduction.

Issue(s) to be Decided

The landlord's application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and filing fee, and authorization to retain the security deposit in set off.

The tenants' application requires a decision on whether there are grounds to set the Notice to End Tenancy aside and whether the other orders sought are warranted.

Background and Evidence

This tenancy began on August 1, 2010. Rent is \$750 per month and the landlords hold a security deposit of \$375 paid on May 1, 2010.

During the hearing, the landlords gave evidence that the Notice to End Tenancy had been served on February 2, 2012 when the tenant had paid only \$375 of the \$750 due on February 1, 2012 and \$375 remained unpaid at the time of the hearing. (The Notice to End Tenancy cited \$405 owed, but as it was given later, I will use the \$375 figure claimed during the hearing.)

The landlords also asked for loss of rent for March 2012.

The tenant did not contest the rent arrears and gave explanation that because of the time of year, he had not had the landscaping work he does in the warmer seasons. The tenant stated he has been looking for new accommodation and hopes to be able to move by the end of the month.

As to the tenant's application, he has based the claim for reduced rent on the presence of mould in the rental unit. The landlord gave evidence that he was not advised of the tenant's concern until January 20, 2012. He examined the unit himself on January 27, 2012 and had a mould specialist inspect all units in the complex on February 3, 2012. The expert found minor mould in three of the nine units, none of which required professional treatment and all of which were attributable to tenant activities. For example, the subject tenant had five uncovered fish tanks that would have contributed to high humidity, in addition to numerous small pet tanks. The tenant stated he had lost eight hamsters, five of which he believed were attributable to the mould.

The tenant stated that his request with respect to subletting was based on his wish to have a roommate to share rent. The landlord stated that the tenant had one or two roommates previously who had only stayed for a short time, and there had been no unreasonable refusal.

The tenant's request to set aside the Notice to End Tenancy is dealt with in the landlord's application.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it as the tenant has done in this matter.

In this instance, while the tenant has made application, I find as fact that the tenant did not pay the rent within five days of receiving the notice which, therefore, remains in effect. .

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was February 12, 2012.

Accordingly, I find that the landlords are entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that the landlords are entitled to a monetary award for the unpaid rent for February, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed. I decline, however, to award loss of rent for March 2012 as the possibility remains that the tenant will vacate before the end of February and it remains possible that the landlords will find a new tenant for some time in March 2012.

Thus, I find that the landlords are entitled to a monetary award calculated as follows:

Rent shortfall for February 2012	\$375.00
Sub total	\$425.00
Less retained security deposit (No interest due)	<u>- 375.00</u>
TOTAL	\$ 50.00

Conclusion

The tenant's application is dismissed on its merits without leave to reapply.

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order for \$50.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlords remain at liberty to make application for any further damage or losses as may be ascertained at the conclusion of the tenancy.

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: February 24, 2012.

Residential Tenancy Branch