



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MND, MNR, MNSD, CNR, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for cancellation of a 10 Day Notice to End Tenancy; for the return of the security deposit;; and to recover the filing fee associated with this application.

By the landlord: as an application for an Order of Possession for unpaid rent and utilities, and for cause; a Monetary Order for unpaid rent and utilities; for damage to the unit; and to recover the filing fee associated with his application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent on February 21, 2012, and provided a Canada Post tracking number. 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 a Monetary Order, and if so for what amount?

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 a manufactured home on a private residential lot. Pursuant to a written agreement, the month to month tenancy started on January 16, 2010. The rent is \$800.00 per month payable on the 16th of the month, and the tenant paid a security deposit of \$400.00, and a pet damage deposit of \$400.00.

The landlord testified that the tenant only paid half a months' rent for December 2011, no rent for January and February 2012, and no utilities for November and December 2011.

In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy served on the tenant on February 2, 2012, by posting the notice on the tenant's door. The landlord stated that he omitted to indicate the amount of rent owing and therefore he posted a second notice on February 13, 2012.

The landlord submitted a monetary claim as follows:

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|---------------------------------------|-----------|
| - Unpaid rent for December 2011: | \$ 400.00 |
| - Unpaid rent for January 2012: | \$ 800.00 |
| - Unpaid rent for February 2012: | \$ 800.00 |
| - Unpaid utilities for November 2011: | \$ 159.39 |
| - Unpaid utilities for December 2011: | \$ 136.71 |
| - Sub-total: | \$2296.10 |

The landlord stated that the tenant has started to move out and that only a few personal belongings remain in the rental unit.

Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

The landlord's monetary claim pertains strictly to unpaid rent and utilities. It is not necessary that I consider the landlord's evidence concerning damages, as he has provided no material evidence to support these claims. Therefore I dismiss the landlord's aspect of the application concerning damages with leave to reapply, and I will address the aspect of the dispute concerning an Order of Possession for unpaid rent, and an Order of Possession for Cause. Since the landlord did not serve the tenant with a 1 Month Notice to End Tenancy for Cause, I dismiss the landlord's application for an Order of Possession for Cause.

Concerning the unpaid rent and utilities; I accept the landlord's undisputed evidence that the tenant did not pay rent as stated in the landlord's claim. Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. I find that the Notices to End Tenancy served were valid, even if the one served on February 2nd did not indicate the amount of rent owing.

Therefore the landlord is entitled to an Order of Possession and a Monetary Order as claimed.

Conclusion

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

The landlord's application for damages to the rental unit is dismissed with leave to reapply.

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

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 \$2296.10. I authorize the landlord to retain the tenant's \$800.00 security and pet damage deposits for a balance owing of \$1496.10. 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 \$1546.10.

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: February 28, 2012.

Residential Tenancy Branch