



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for landlord's use of property; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

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 the upper level of a single detached home. Pursuant to a written agreement, the tenancy started on February 15, 2010. The rent is \$900.00 per month and the tenant paid a security deposit of \$450.00.

The landlord testified that the tenant did not pay rent for July 2011, August 2011, and January 2012 for a sum of \$1800.00 in unpaid rent. The landlord stated that the tenants did not pay utilities; he said that he did not have the invoice, but that the claim with the unpaid utilities totalled \$2153.00. The landlord stated that he gave the tenants a 2 Month Notice to End Tenancy to do a number of renovations in the rental unit. The landlord provided a copy of the notice dated October 31, 2011, with an effective date of December 31, 2011.

Tenant R.P testified that the rental unit had structural problems since the beginning of the tenancy, and that the landlord has not fixed any of the problems yet. He stated that the landlord received cheques for the rent from the Ministry of Social Development that are dropped directly into his account, and that rent was paid in this manner for the months the landlord claims the unpaid rent. Concerning January 2012, the tenant stated that the landlord refused to accept the cheques. In his documentary evidence, the landlord provided a copy of the rent cheques for December 2011 showing that they were cancelled. The landlord then altered his testimony and stated that he only wants an order of possession. The tenant stated that he is on disability, but that he is endeavouring to find alternate accommodations.

Analysis

Section 49(9) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for landlord's use of property does not make an application for dispute resolution within 15 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. On that basis I find the landlord entitled to an Order of Possession.

Concerning the monetary claim for unpaid rent, the landlord bears the burden to prove his claim against the tenant. The landlord provided no documentary evidence to support the quantum of his claim. His testimony was vague and non-specific. He stated that the

tenants did not pay rent for July and August 2011, however provided no explanation for waiting nearly six months to deal with this matter. A remedy for the landlord would have been to seek assistance through dispute resolution to resolve the issue as it occurred. Further, I have no evidence from the landlord that he took steps to collect rent. I find this uncharacteristic of a landlord whose primary role in a tenancy is to ensure rent is paid by a tenant. He did not provide any records that a businesslike landlord would be expected to maintain; he did not produce a ledger or an accounting book or any entries concerning this tenancy, other than the cancelled cheques for December 2011 rent. I find that the landlord has not proven on a balance of probabilities that rent or utilities have not been paid, and I dismiss this aspect of the landlord's application.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenants. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Since the landlord was partially successful, I authorize the landlord to keep \$25.00 from the security deposit as partial satisfaction for the filing fee. The security deposit is hereby set at \$425.00.

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 07, 2012.

Residential Tenancy Branch