



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MND, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / and recovery of the filing fee. Both parties attended the hearing and, despite repeatedly talking over each other, undertook to give affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on February 1, 2010. Monthly rent of \$800.00 is payable in advance on the first day of each month. The tenancy agreement provides that a security deposit of \$400.00 was required on February 1, 2010; however, while the landlord claims that a security deposit was never collected, the tenant claims he has a receipt showing that it was indeed paid. In any event, as the landlord's application does not include an application to retain the security deposit, I make no finding here as to whether or not it was ever collected.

The landlord claims that rent was increased to \$834.00 per month effective January 1, 2012. The tenant disputes this and claims that he was not served with a 3 month notice of rent increase.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated February 16, 2012. The notice was served by way of posting on the tenants' door on that same date. A copy of the notice was submitted in evidence, and shows a total of \$1,718.00 owing. The landlord testified that the amount owing is calculated as follows:

\$834.00: unpaid rent for January 2012

\$ 25.00: fee assessed for late payment of rent
\$834.00: unpaid rent for February 2012
\$ 25.00: fee assessed for late payment of rent

Subsequently, the tenants claim that they made no further payment toward rent and that they effectively vacated the unit on January 27, 2012. The tenant testified that the landlord knows where they currently live, and he agreed that the keys to the unit have not been returned to the landlord.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants partially vacated the unit on January 27, 2012, that they now live elsewhere, that they have still not returned the unit keys to the landlord, and that a limited number of their possessions and discarded belongings continue to remain in the unit.

I also find that by way of posting on the unit door, the tenants were served with a 10 day notice to end tenancy for unpaid rent dated February 16, 2012. Following service of the notice, I find that the tenants made no further payment toward rent for January or February 2012, and neither did they apply to dispute the notice within 5 days following its receipt. In the result, I find that the landlord has established entitlement to an order of possession.

As for the monetary order, I find that the landlord has established entitlement to \$1,650.00, which is calculated as follows:

\$800.00: unpaid rent for January 2012
\$800.00: unpaid rent for February 2012
\$ 50.00: filing fee

In the absence of any documentary evidence in support of an increase in rent from \$800.00 to \$834.00 effective January 1, 2012, and in view of the conflicting testimony on this point, I find that unpaid rent is calculated on the basis of \$800.00 per month.

During the hearing the landlord requested that a monetary order include compensation for unpaid rent for March 2012, however, I dismiss the landlord's oral request with leave to reapply after such time as he has possession of the unit.

In the absence of any provision in the tenancy agreement for the assessment of a fee for late payment of rent, and in the absence of a copy of the addendum to the tenancy

agreement to which reference is made in the tenancy agreement, the landlord's claim for these amounts is hereby dismissed. In this regard, section 7 of the Regulation which addresses **Non-refundable fees charged by landlord**, provides in part:

7(2) A landlord must not charge the fee described in paragraph (1)(d) or (e) unless the tenancy agreement provides for that fee.

The landlord also has the option to reapply for a monetary order as compensation for damage to the unit, site or property after such time as he has possession of the unit. In the meantime, in the absence of any supportive documentary evidence, that aspect of the landlord's application is hereby dismissed with leave to reapply.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,650.00**. Should it be necessary, this order may be served on the tenants, filed 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: March 14, 2012.

Residential Tenancy Branch