



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 hearing dealt with an application for dispute resolution under the Residential Tenancy Act (the “Act”) by the landlords for an order of possession, a monetary order for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenant’s security deposit and to recover the filing fee.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, respond each to the other and make submissions to me.

Issue(s) to be Decided

Has the tenant breached the Act or tenancy agreement, entitling the landlord to an order of possession, a monetary order and to recover the filing fee?

Background and Evidence

This month to month tenancy began on November 1, 2011, monthly rent is \$1250.00, and a security deposit of \$625.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave affirmed testimony and supplied evidence that on March 1, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), by personal delivery, listing unpaid rent of \$1050.00 as of February 1, 2012. The effective vacancy date listed on the Notice was March 10, 2012.

The Notice also listed unpaid rent for March 1, 2012, in the amount of \$1250.00, although the amount was not past due as of the date of the issuance of the Notice.

As to why, the landlord stated that he “knew” the tenant would not pay rent in March.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

I have no evidence before me that the tenant applied to dispute the Notice.

The landlord stated that the tenant made a payment of \$400.00 on March 12, 2012, and as of the date of the hearing, the tenant owed \$1900.00 in unpaid rent.

The tenant acknowledged owing this amount; however, the tenant further stated that he attempted to pay the landlord this amount, with the landlord refusing to accept the payment.

The tenant also stated that because the landlord did not accept the rent payment, he has packed and will be vacating the rental unit on April 1, 2012.

The landlord denied refusing the payment, only that the acceptance would be on a “for use and occupancy basis.”

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant did not pay the outstanding rent or apply to dispute the Notice within five days and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlords are entitled to an order of possession effective **at 5:00 p.m. on April 1, 2012.**

I am enclosing an order of possession with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court of British Columbia should the tenant fail to comply with this order of possession.

I find that the landlords have established a total monetary claim of **\$1950.00** comprised of outstanding rent of **\$1900.00** through March 31, 2012, and the **\$50.00** filing fee paid by the landlords for this application.

At the landlords' request, I allow the landlord to retain the tenant's security deposit of **\$625.00** in partial satisfaction of the claim and I grant the landlords a monetary order pursuant to section 67 of the Act for the balance due, in the amount of **\$1325.00**.

I am enclosing the monetary order for **\$1325.00** with the landlords' Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

Conclusion

The landlords are granted an Order of Possession and are granted a monetary order for **\$1325.00**.

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: March 28, 2012.

Residential Tenancy Branch