



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC; MNR; MND; MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and damage to the rental unit; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenants.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that he handed two copies of the Notice of Hearing documents to the Tenant JPB at the rental unit on March 15, 2012.

I find that the Landlord did not serve the Tenant DK with the Notice of Hearing documents in a manner required by Section 89 of the Act. Therefore, the Landlord's application against the Tenant DK is dismissed.

Based on the affirmed testimony of the Landlord's agent, I am satisfied that the Tenant JPB was duly served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(a) of the Act. Despite being served with the Notice of Hearing documents, the Tenant JPB did not sign into the teleconference and the Hearing proceeded in his absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

The Landlord issued a Notice to End Tenancy for Cause on January 30, 2012 (the "Notice"). The Landlord's agent personally served the Tenants with the Notice on January 30, 2012, at the rental unit.

The Landlord's agent testified that the Tenants remain in the rental unit.

The Landlord's agent testified that the Tenants paid a security deposit in the amount of \$347.50 on or about October 1, 2010. The Landlord's agent testified that he has had a few inspections at the rental unit, and that he has identified damage to walls and that "everything is in bad shape". He stated that rent payments were currently up-to-date. The Landlord's agent submitted that the damages were going to be more than the security deposit would cover.

Analysis

I accept that the Landlord served the Tenants with the Notice to End Tenancy on January 30, 2012. This is an undisputed Notice. The Tenants did not file for dispute resolution within 10 days of receiving the Notice. Therefore, pursuant to the provisions of Section 47(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on February 29, 2012. I find that the Landlord is entitled to an Order of Possession and I make that Order against the Tenant JPB and any guest or other person occupying the above noted rental unit, effective 2 days after service of the Order upon the Tenant JPB.

The Landlord's agent testified that rent is up-to-date and therefore I dismiss the Landlord's application for a monetary award for unpaid rent.

I find that the Landlord's application for a monetary award for damages to the rental property is premature. The Tenants remain in the rental unit and the Landlord has not had an opportunity to properly assess damages, get estimates for repair, or repair the damages and provide receipts for the cost of repair. Therefore, I dismiss this portion of the Landlord's claim with leave to reapply.

The Landlord has been successful in its application for an Order of Possession and I find that it is entitled to recover the cost of the \$50.00 filing fee from the Tenants. In accordance with the provisions of Section 72 of the Act, the Landlord may deduct \$50.00 from the security deposit in satisfaction of this portion of its claim.

The remainder of the security deposit in the amount of \$297.50 is available for application by either party in accordance with the provision of the Act.

Conclusion

The Landlord's application for a monetary award for unpaid rent is dismissed.

The Landlord's application for a monetary award for damages is dismissed **with leave to reapply**.

The Landlord may deduct **\$50.00** from the security deposit in satisfaction of recovery of the filing fee. The balance of the security deposit in the amount of \$297.50 remains available for application by either party in accordance with the provisions of the Act.

I hereby grant the Landlord an Order of Possession effective **2 days after service upon the Tenant JPB**. This Order may be filed in the Supreme Court of British Columbia 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: April 03, 2012.

Residential Tenancy Branch