



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call this date in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application.

The hearing was originally scheduled for May 16, 2012 and was adjourned to today. The landlord provided evidence of having served the tenant with the Landlord's Application for Dispute Resolution and a notice of hearing which scheduled the hearing for May 16, 2012 by registered mail. The landlord was called by the Residential Tenancy Branch to advise of the necessity to adjourn the hearing, however the phone number for the tenant was not in service and the tenant could not be contacted prior to the time of the scheduled hearing. The conference call commenced on May 16, 2012 however, despite being served, the tenant did not attend. A new notice of hearing was sent to the landlord and to the tenant which re-scheduled the hearing for May 18, 2012, at which time the agent for the landlord company attended, however the tenant did not attend.

I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord's agent gave affirmed testimony and provided evidence in advance of the hearing to the tenant and to the Residential Tenancy Branch, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on May 1, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$750.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$375.00. The rental unit is a manufactured home in a manufactured home park.

The landlord's agent further testified that half of the tenant's rent is paid by the government and the tenant pays the other half. The tenant did not pay half of the rent for the month of November, 2011 and \$375.00 remains outstanding. The tenant further failed to pay rent in full for the months of December, 2011 through March, 2012, leaving a balance outstanding of \$25.00 for each of those months. The tenant had collected rent cheques from the tenant's mother and delivered same to the landlord's agent, and was continually told that \$25.00 was still required for each of those months. The tenant promised to make up those arrears but never did. The tenant further failed to pay half of the rent for the month of April, 2012 but the tenant called the landlord stating that \$350.00 cash was given to the tenant by the tenant's mother and the tenant would bring it to the landlord's agent.

The landlord's agent completed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities expecting to receive the \$350.00 that the tenant stated was provided by the tenant's mother. A copy of the notice was provided for this hearing and it states that the tenant failed to pay rent in the amount of \$500.00 that was due on April 1, 2012. The landlord's agent testified that the notice was posted to the door of the rental unit on April 12, 2012. The notice contains an expected date of vacancy of April 22, 2012, and both pages of the 2-page form have been provided. The landlord's agent testified that the \$350.00 was never collected from the tenant, and the tenant therefore owed more than indicated on the notice. The government paid half of the tenant's rent for the month of April, 2012 and the landlord's agent issued a receipt to the tenant which is clearly marked "For Use and Occupancy Only," a copy of which was also provided for this hearing.

The landlord's agent further testified that no application for dispute resolution has been served on the landlord.

The landlord claims \$1,225.00 in unpaid rent, an Order of Possession, an order permitting the landlord to keep the security deposit in partial satisfaction of the claim and recovery of the \$50.00 filing fee for the cost of this application.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due. If the tenant fails to do so, the landlord may serve the tenant with a notice to end tenancy. Once served, or deemed served, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice which must be no less than 10 days after service. In this case, I accept the undisputed testimony of the landlord's agent that the notice was posted to the door of the rental unit on April 12, 2012. The *Act* states that documents served in that manner are deemed to have been served 3 days later, or in this case April 15, 2012. The *Act* also states that where incorrect dates in a notice exist, the dates are deemed to be changed to the nearest date that complies with the *Act*. I find that the nearest effective date of the notice to end tenancy is April 25, 2012, being 10 days after the tenant was deemed to have been served. The tenant has not paid the rent in full and has not disputed the notice, and therefore, I find that the landlord is entitled to an Order of Possession.

With respect to the monetary order, I accept the testimony of the landlord's agent and accept the dates and explanation of the amount written on the notice to end tenancy; the amount of \$500.00 was written thereon in contemplation of receiving \$350.00 cash from the tenant as promised. I further accept that the landlord is owed \$375.00 for November, 2011, \$25.00 for each of the months of December, 2011, January, February and March, 2012, \$375.00 for April and an additional \$375.00 for May, 2012.

Since the landlord has been successful with the claim, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Having found that the tenant owes rent in the amount of \$1,225.00, I order the landlord to keep the security deposit in the amount of \$375.00 in partial satisfaction of the claim and I grant a monetary order in favour of the landlord in the amount of \$900.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. If the tenant fails 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.

I further order the landlord to keep the security deposit in the amount of \$375.00 and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the difference in the amount of \$900.00.

This order is final and binding on the parties and may be enforced.

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: May 18, 2012.

Residential Tenancy Branch