



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPC, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to alleged cause, a monetary order for unpaid rent and for money owed or compensation for damage or loss, for authority to retain the tenants' security deposit and to recover the filing fee.

The landlord and tenant MS appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the beginning of the hearing neither party raised any issue regarding service of the evidence or the application.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to alleged cause, a monetary order, for authority to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

This tenancy began on September 1, 2012, monthly rent is \$775.00, and a security deposit of \$387.50 was paid by the tenants at the beginning of the tenancy. The landlord said that the tenants also paid a pet damage deposit of \$200.00 and have yet to pay the balance of \$187.50. I note that I was unable to confirm this submission as I was not provided a tenancy agreement.

The landlord submitted evidence that the tenants were served a 1 Month Notice to End Tenancy for Cause (the "Notice"), dated November 26, 2012, by leaving it with the tenants on that date, listing an effective end of tenancy of December 31, 2012.

The Notice explained that the tenants had ten days to dispute the Notice. It also explains that if the tenants did not file an application to dispute the Notice within ten days, then the tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The causes as stated on the Notice alleged that the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submitted that he agreed the tenants could overhold in the rental unit until January 15, 2013 and pay a partial month's rent; despite this agreement, the tenants have not yet vacated.

The landlord said that on the day before the hearing, he did receive a cheque for \$570.00 from tenant TC.

The landlord's monetary claim is in the amount of \$775.00, which is for unpaid rent for January 2012; despite this, the landlord said he was also requesting \$187.50 for the balance of the pet damage deposit for which the tenants failed to pay.

The landlord's relevant evidence included the Notice and a letter to the "welfare office" stating the tenants had permission to overhold in the rental unit until January 15, 2013.

The tenant agreed that he received the Notice as stated by the landlord and did not file an application for dispute resolution to dispute that Notice. The tenant said that he has been actively seeking another rental unit, has been unsuccessful up to the time of the hearing and that he expects to have a new rental unit secured within a week.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

The tenants did not apply to dispute the Notice and are therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective vacancy date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenants.

I find the landlord has substantiated their monetary claim for unpaid rent for January 2013, in the amount of \$205.00, which is the monthly rent obligation of \$775.00 less \$570.00 received by the landlord the day prior to the hearing.

I also find the landlord is entitled to recovery of the filing fee of \$50.00.

Due to the above, I find the landlord has proven a total monetary claim of \$255.00, comprised of the balance of unpaid rent for January 2013 in the amount of \$205.00 and the filing fee of \$50.00.

As to the landlord's request for payment of \$187.50 for the balance of the pet damage deposit, I informed the landlord I would be unable to deal with this request as that amount was not listed in their application. Additionally, the landlord is informed that failure to pay the entire pet damage deposit, if it was required, is a cause which could end the tenancy, as appears to be the case here. Even had the landlord claimed such an amount, I would not have ordered it as it is not a loss suffered by the landlord.

Conclusion

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

At the landlord's request, I allow the landlord to retain the amount of \$255.00 from the tenants' security deposit of \$387.50 in full satisfaction of their proven monetary claim.

As the tenancy has not yet ended, the balance of the tenants' security deposit and the pet damage deposit is an issue to be dealt with at the end of the tenancy in accordance with the Act.

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* and is being mailed to both the applicant and the respondent.

Dated: February 01, 2013

Residential Tenancy Branch

**Now that you have
your decision...**

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
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- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
 - How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
 - How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
 - How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca
