



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Owners of Strata Corp. BCS2429, c/o Baywest Management Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDC, MNSD, FF

Introduction

This Hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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 the application.

An agent for the landlord company and a witness for the landlord attended the conference call hearing and both gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution, evidence, and notice of hearing documents by registered mail on February 28, 2014, no one for the tenant attended. The landlord's agent testified that the documents were served in that manner on that date and provided a tracking number assigned by Canada Post. I find that the tenant has been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord's agent and witness.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for over-holding?

- Is the landlord entitled to keep 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 fixed term tenancy began on October 1, 2013 and was to expire on October 1, 2014. Rent in the amount of \$1,200.00 per month is payable in advance on the 1st day of each month, and a copy of the tenancy agreement has been provided. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 as well as a pet damage deposit in the amount of \$300.00, all of which is still held in trust by the landlord.

The landlord's agent testified that the tenant was served with a 1 Month Notice to End tenancy for Cause with an expected date of vacancy of February 28, 2014 but the tenant has not yet vacated the rental unit and has not paid any rent for March, 2014. Further, attempts to conduct an inspection have not been successful despite the landlord giving written notice to inspect the rental unit, and the landlord's keys to the rental unit do not work to unlock the door. The tenant claimed that the locks have not been changed. The tenant's power has been turned off and the landlord's agent believes the tenant has started to vacate the rental unit as of yesterday.

The landlord's witness is another agent and employee of the landlord company and testified that the tenant was served with the notice to end tenancy on January 10, 2014 by registered mail and provided a tracking number assigned by Canada Post. A copy of the notice has been provided for this hearing. The notice is dated January 10, 2014 and contains an effective date of vacancy of February 28, 2014. The reasons for issuing the notice state:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;

and:

- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord has not been served with an application for dispute resolution by the tenant.

The witness also testified that it will not be possible to re-rent the rental unit for March 15, 2014 and may not be able to re-rent for April, 2014. The tenant has not yet moved all belongings out of the rental unit, and power must be restored before it can be advertised for rent.

The landlord requests an Order of Possession, for an order permitting the landlord to keep the deposits for unpaid rent for the month of March, 2014, and a monetary order for the difference.

Analysis

The *Residential Tenancy Act* states that if a tenant fails to dispute a 1 Month Notice to End Tenancy for Cause within 10 days of service, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out. In this case, I have reviewed the notice to end tenancy and I find that it has been issued in accordance with the *Act*, and contains an effective date of vacancy that is consistent with the *Act*. I also accept the testimony of the landlord's agent that the tenant was served with the notice on January 10, 2014 by registered mail, which is deemed to have been served 5 days later, or January 15, 2014. The agent also testified that the landlord has not been served with an Application for Dispute Resolution by the tenant, and therefore, I find that the tenant has not disputed the notice within the 10 day period. The tenant is conclusively presumed to have accepted that the tenancy ended on February 28, 2014. The tenant did not move out, and is therefore over-holding, and I find that the landlord is entitled under the *Act* to an Order of Possession.

With respect to the monetary order, I accept the undisputed testimony of the landlord's agent and witness and, having found that the tenant is over-holding, I find that the landlord has established a monetary claim as against the tenant for rent for the month of March, 2014 in the amount of \$1,200.00.

The landlord currently holds a security deposit in the amount of \$600.00 and a pet damage deposit of \$300.00, and the *Act* states that where an amount is ordered to be paid by a tenant to a landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find it justifiable in the circumstances that I make such an order.

I order the landlord to keep the security deposit and pet damage deposit, totalling \$900.00 in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$300.00. Since the landlord has been successful with the application, the landlord is entitled to recovery of the \$50.00 filing fee for the cost of the application.

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 tenancy.

I order the landlord to keep the security deposit and pet damage deposit, and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$350.00.

These orders are 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: March 10, 2014

Residential Tenancy Branch

