



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenants did not appear although they were served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on August 27, 2014. Since the landlord filed his application, the tenants have moved out of the rental unit and an order for possession is no longer required..

Issues

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began on March 1, 2013 for a one year term and thereafter month to month. The rent is \$950.00 due in advance on the first day of each month, although the landlord collected only \$900.00 per month during the tenancy. In this application the landlord has limited his claim to the lesser amount for the months when rent has not been paid. The tenants paid a security deposit of \$475.00 at the start of the tenancy. The tenants did not pay rent for July or for August when it was due. On August 5, 2014 the landlord served the tenants with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit. The tenants did not pay rent for July or for August and they did not file an application to dispute the Notice to End Tenancy. The tenants confirmed to the landlord by text message that they moved out of the rental unit on August 30th. The landlord has claimed unpaid rent for July and August and an outstanding electrical bill from the City of New Westminster in the amount of \$944.56

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession – Because the tenants have moved out of the rental unit an order for possession is not required; the landlords application for an order for possession is therefore dismissed.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$1,800.00 for the outstanding rent for July and August. The landlord is entitled to recover unpaid utilities in the amount of \$944.56 and the \$50.00 filing fee for this application for a total award of \$2,794.56. I order that the landlord retain the deposit and interest of \$475.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,319.56. This order may be filed in the Small Claims Court 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: October 21, 2014

Residential Tenancy Branch

