



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PUPPY HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR OPR MNSD

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on January 5, 2017 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order allowing the Landlord to retain all or part of the security deposit.

The Landlord was represented at the hearing by M.J., who provided affirmed testimony. According to the Landlord, the Tenant died in or about September 2016. Neither a representative of the deceased Tenant's estate, nor the Tenant's son, J.G., attended the hearing.

On behalf of the Landlord, M.J. testified that the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Respondents by registered mail on January 6, 2017. However, for the reasons that follow, it is not necessary for me to consider whether or not these documents were received by the Respondents.

M.J. was provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order permitting him to retain all or part of the pet damage deposit or security deposit?

Background and Evidence

The Landlord submitted into evidence a copy of the tenancy agreement between the parties. It confirmed that a fixed-term tenancy was in effect for the period from April 1, 2012 to April 1, 2013. Thereafter, the tenancy continued on a month-to-month basis. At all material times, rent in the amount of \$955.00 per month was due on the first day of each month. In addition, the Tenant paid \$40.00 per month for parking, which was also due on the first day of each month. The Tenant paid a security deposit of \$450.00 at the beginning of the tenancy, which the Landlord holds.

On behalf of the Landlord, M.J. testified that the Tenant died in or about September 2016. Since that time, the rental unit has not been occupied. However, rent was paid by one or both of the Tenant's sons until November 30, 2016. No further rent payments have been received. In addition, M.J. testified that, despite more than 30 attempts to contact the Tenant's sons, they have not responded.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Residential Tenancy Branch Policy Guideline 43 states:

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named.

[Reproduced as written.]

In this case, the Landlord's Application names the Tenant and one of his sons, who is not a tenant, as parties. I am not satisfied that the Tenant's son named in the Application is the personal representative of the Tenant's estate. Accordingly, I dismiss

the Landlord's Application for monetary relief with leave to reapply at a later date when the name of the personal representative of the deceased's estate is known.

However, based on the affirmed testimony of M.J., I am satisfied that the Tenant is deceased, that the Landlord has not received rent for the months of December 2016 and January 2017, and that the Landlord has been unable to contact the Tenant's sons, despite repeated attempts. In other words, I am satisfied that the rental unit has been abandoned and the tenancy is ended. Accordingly, I find the Landlord is entitled to an order of possession, effective immediately.

The Landlord is reminded of his obligations under Part 5 of the Residential Tenancy Regulation, which describes how to deal with abandoned personal property.

Conclusion

The Landlord's Application for monetary relief for unpaid rent and cleaning costs is dismissed with leave to reapply once the Landlord learns the name of the legal representative of the estate of the deceased Tenant.

The Landlord is granted an order of possession, effective immediately. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: February 1, 2017

Residential Tenancy Branch