



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR

Introduction

There are applications filed by both parties. The Landlord has made an application for an order of possession and a monetary order for unpaid rent, to keep all or part of the security and pet damage deposits and recovery of the filing fee. The Tenant has made an application to cancel the notice to end tenancy issued for unpaid rent, an order for the Landlord to comply with the Act, regulations or the Tenancy Agreement, to make repairs to the unit, site or property and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing and documentary evidence packages submitted by the other party, I am satisfied that both parties have been properly served.

It was clarified with both parties at the beginning of the hearing that the dispute address should be "Lake Country" as opposed to the Tenant's application which states, "Winfield" as both parties have agreed that there was a recent name change. The Tenant's Application shall be amended as agreed.

It was further clarified with both parties that the Tenant's Application for OLC, RP are not related to the issue of unpaid rent and is dismissed with leave to reapply.

The Landlord states that the Tenant failed to apply for dispute resolution within the allowed time frame of 5 days upon being served. The Landlord states that the Tenant was served with the notice dated March 3, 2013 in person on the same date and did not file for dispute resolution until March 11, 2013, 8 days later. The Tenant confirms that "more time" was not applied for and has provided no exception reasons to extend the time to apply. On this basis, I find that the Tenant's Application is dismissed as he has failed to apply within the allowed time frame as per the Act.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security and pet damage deposits?

Background, Evidence and Analysis

Both parties have agreed that the 10 day notice to end tenancy issued for unpaid rent was dated March 3, 2013 and served in person on March 3, 2013 on the Tenant by the Landlord as neither party has submitted a copy of the notice. Both parties have agreed that the notice states that rent of \$950.00 was due on March 1, 2013 and remains unpaid and that a stated effective date of the notice was March 13, 2013. Both parties agreed that no signed tenancy agreement exists but that a verbal agreement was made for \$950.00 in monthly rent due on the 1st of each month and that a \$400.00 security deposit was paid.

The Landlord seeks an order of possession and a monetary order for unpaid rent for March and April of 2013. The Landlord has stated that as of the date of this hearing that no rent has been paid since the notice dated March 3, 2013. The Tenant has stated in his direct testimony that rent was withheld in dispute over issues relating to the tenancy.

The Landlord states that a \$200.00 pet damage deposit was paid by the Tenant. The Tenant disputes this stating that a \$400.00 pet damage deposit was paid. Neither party has submitted any supporting evidence as to the amount paid for the pet damage deposit.

I find based upon the evidence provided that the Tenant did fail to pay rent when it was due. I also find on a balance of probabilities that a pet damage deposit of \$200.00 was paid as the Tenant is unable to provide sufficient evidence to satisfy me that a \$400.00 payment was made.

The Landlord is entitled to an order of possession and a monetary order for unpaid rent as the Tenant has confirmed in his direct testimony that he withheld rent. The Landlord is granted an order of possession. This order must be served upon the Tenant. Should the Tenant fail to comply, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the Landlord has established a claim for \$1,900.00 in unpaid rent for March (\$950.00) and April (\$950.00). The Landlord is also entitled to recovery of the \$50.00 filing fee. As the Landlord currently holds a combined pet damage and security deposits of \$600.00, I order that the Landlord retain the \$600.00 in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$1,350.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant's Application is dismissed.

The Landlord is granted an order of possession and a monetary order for \$1,350.00.

The Landlord may retain the combined pet damage and security deposits.

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: April 05, 2013

Residential Tenancy Branch

