



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlords' Application for Dispute Resolution, in which the Landlords made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at both hearings. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

At the second hearing the Landlords withdrew their application for an Order of Possession, as the rental unit has been vacated.

Issue(s) to be Decided

The issues to be decided are whether the Landlords are entitled to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

At the first hearing, the Landlords and the Tenants agreed that the tenancy began on July 01, 2008 and that the Tenants were required to pay monthly rent of \$950.00 plus 50% of the utilities.

At the first hearing, the Landlords and the Tenants agreed that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 11, 2008, was personally served on the Tenants on December 02, 2008. The Notice

indicated that the Notice would be automatically cancelled if the Landlords received \$1,020.18 within five days after the Tenants were assumed to have received the Notice. The Notice also indicated that the Tenants are presumed to have accepted that the tenancy is ending and that the Tenants must move out of the rental by the date set out in the Notice unless the Tenants file an Application for Dispute Resolution within five days.

At the first hearing, the female Tenant stated that she does not owe the Landlords rent from December of 2008. She stated that she gave the Landlords \$3,880.00 in cash on August 27, 2008. She stated that the payment represented rent payment for September, October, November and December plus \$78.00 for utilities from August of 2008. She stated that she did not receive a receipt for the payment she made on August 27, 2008. She stated that she has always paid the Landlords in cash and she has never received a receipt for any of the payments she made. She stated that she believes the Notice to End Tenancy is invalid because she had paid the rent for December.

The female Landlord stated that she received \$2,978.00 in cash from the female Tenant on August 27, 2008, which represented rent payments for September, October, and November plus a utility payment of \$128.00. She stated that she did give the Tenants receipts for the rent paid, which she would be able to submit as evidence.

After hearing the contradictory evidence presented by both parties at the original hearing, I determined that an adjournment was necessary. I adjourned the hearing to allow both parties to introduce evidence that might establish whether the rent for December was paid in August. Both parties were advised that they must serve the other party with evidence that they submit to the Residential Tenancy Branch.

The Landlords did submit new evidence prior to the second hearing, however no rent receipts were in evidence before me at the time of the second hearing. At the second hearing, the Landlords insist that they submitted the receipts to the Residential Tenancy Branch and that the male Landlord personally served them on the Tenants on January 23, 2009. The female Tenant denied being served copies of the rent receipts.

The Landlords were permitted to fax copies of the rent receipts to me at the conclusion of the second hearing.

At the second hearing the Witness for the Landlord stated that she lives in a suite below the subject rental unit. She stated she had experienced difficulties with the Tenants and she had expressed her concerns to the Landlords, who advised her that they could not evict the Tenants until the end of November, as the Tenants had prepaid their rent until the end of November. She stated that the Tenant also told her that her rent had been prepaid until the end of November.

The female Tenant did not join the second hearing until 10:10 a.m., which was 10 minutes after the hearing began. The Tenant was not present during the evidence given by the Witness, and she was not able to ask questions of that witness. The evidence provided by the Witness was summarized, and the Tenant reiterated that she had prepaid her rent for December.

At the original hearing the female Tenant agreed that she will pay the rent that is due for January and any utilities that are due. At the second hearing the Landlords stated that the Tenants did not pay rent for January or any utilities. The Tenant agreed that she has not paid rent for January of 2009.

The Landlords are also seeking compensation for loss of revenue for February of 2009, as the Tenants did not return the keys to the rental unit until February 02, 2009. The parties agreed that the Tenant verbally advised the Landlord on January 23, 2009 that the rental unit would be vacated at the end of the month.

Prior to the second hearing, the Landlord submitted two bills from Terason Gas in the amounts of \$265.21 and \$448.70; and a bill from BC Hydro in the amount of \$254.28. At the second hearing the Tenant agreed that they owed fifty percent of these bills, which is \$484.09.

Analysis

After considering the contradictory evidence of the Landlords and the Tenants, I find that the Tenants did not pay rent for December of 2008, and that the Landlords are entitled to compensation in the amount of \$950.00. In reaching this conclusion, I placed considerable weight on the evidence provided by the Witness, who is an independent party who testified that she was advised by both parties that the Tenants had prepaid their rent until the end of November of 2008. I found this witness to be unbiased and forthright, and I have no reason to question her credibility.

In reaching this conclusion, I did not consider the rent receipts submitted by the Landlords, as I am not satisfied this evidence was properly served on the Tenants. In reaching this conclusion, I was strongly influenced by Tenant's statement that the rent receipts were not served on her and by the absence of evidence to support the Landlord's statement that he personally served the evidence on the Tenant.

As the parties agree that the Tenants did not pay rent for January, I find that the Landlords are entitled to \$950.00 for the unpaid rent from January of 2009.

Section 45(1) of the *Act* stipulates that a tenant may give the landlord notice that they wish to end the tenancy on a date that is not earlier than one month after the date the landlord receives the notice. I find that the Tenants did not comply with the *Act* when they did not give one full month's notice of their intent to vacate the rental unit on

February 02, 2009. I find that the Tenants' actions prevented the Landlord from finding new tenants for February 01, 2009, as the Landlord did not have a reasonable opportunity to find new tenants with only ten days notice. I find that the Landlord is therefore entitled to compensation for loss of revenue for the month of February of 2009, in the amount of \$950.00.

As the parties agreed that the Tenants owed \$484.09 in utilities, I find that the Landlord is entitled to compensation in that amount.

I find that the Landlords' application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$3,384.09, which is comprised on \$1,900.00 in unpaid rent for December and January; \$950.00 in loss of revenue from February of 2009; \$484.09 in unpaid utilities; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain the Tenant's security deposit of \$475.00 in partial satisfaction of this monetary claim and I will grant the Landlord a monetary Order for the remaining amount of \$2,909.09. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: February 16, 2009
