



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: OPR, MNR, MNSD, & FF

Introduction:

This hearing dealt with the landlord's application for an Order of Possession and a monetary claim related to non-payment of rent. Both parties appeared for the hearing and had the opportunity to be heard and respond to the evidence of the other party.

Both the landlord and the tenant confirmed that the tenancy ended effective February 6, 2006 and that an Order of Possession is no longer necessary.

Issue to be Determined:

Is the landlord entitled to a monetary claim related to non-payment of rent by the tenant?

Background and Evidence:

The landlord and tenant have been in fixed term leases since January 18, 2007. Each lease ran for three months and the current lease expires on February 28, 2009. The monthly rent is \$845.00 and a security deposit of \$422.50 was paid on January 18, 2007.

The tenant paid to pay the full rent in January 2009. On January 10, 2009 the tenant was served with a 10 day Notice to End Tenancy. The tenant did not dispute the notice. On January 23, 2009 the tenant paid \$135.00 of the \$435.00 outstanding. The tenant paid the remaining amount owed by the end of January 2009.

However, the tenant did not pay the rent for February 2009. The landlord seeks this sum in their monetary claim. The landlord also seeks to retain the remaining portion of the tenant's security deposit plus interest against this amount owed. During the move-out condition inspection the tenant consented to the landlord retaining \$357.00 of his security deposit plus interest for cleaning costs.

The tenant stated that the landlord was aware of his financial difficulties and his inability to afford the rental unit. He questioned why the landlord did not only request a pro-rated portion of the February 2009 rent.

Analysis:

The payment of rent is a material term of any tenancy agreement. It is a core term on which the agreement revolves. Any breach of this term, however minor, can result in the

agreement being ended. This is reflected pursuant to section 46 of the *Act* which allows a tenant to be served with a 10 day Notice to End Tenancy due to non-payment of rent.

There is no dispute that the tenant failed to pay rent and was having difficulty meeting his obligation to the landlord. This does not; however, relieve the tenant of his obligation. The tenant did not mitigate the landlord's potential loss by vacating on the effective date of the 10 day Notice to End Tenancy in January and remained in the rental unit until February 6, 2009. As a result I find that the tenant is responsible for the landlord's loss of rent for February 2009 for the sum of \$845.00. From this sum I Order that the landlord may retain the remaining portion of the tenant's security deposit plus interest in partial satisfaction of this claim.

I grant the landlord a monetary Order for the remaining balance of **\$817.04** including the recovery of the \$50.00 filing fee the landlord paid for this application. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion:

I have granted the landlord's application and issued a monetary Order due to the tenant's failure to pay rent.

Dated February 18, 2009.

Dispute Resolution Officer