



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has 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.

The Landlord stated that she personally served each Tenant with copies of the Application for Dispute Resolution and Notice of Hearing, at their rental unit, on February 11, 2009. She stated that her mother was present when the documents were served. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however neither Tenant appeared at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

Background and Evidence

The Landlord stated that this tenancy began on November 23, 2008; that the Tenants agreed to pay monthly rent of \$650.00; and that the Tenants paid a security deposit of \$325.00 on November 24, 2008.

The Landlord stated that she personally served a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of February 15, 2009, to the male Tenant on February 05, 2009. She stated that her mother was present when she served the Notice. The Notice indicated that the Tenants are presumed to have

accepted that the tenancy is ending and that the Tenants must move out of the rental unit by the date set out in the Notice unless the Tenants pay the outstanding rent or file an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Landlord stated that the Tenants paid their rent for January of 2009 by cheque, but that the cheque was not honoured by the bank. She stated that the rent has not yet been paid for January.

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The Landlord stated that the Tenants have not paid any rent for March of 2009.

Analysis

In the absence of evidence to the contrary, I find that the Tenants were served with a Notice to End Tenancy that required the Tenants to vacate the rental unit on February 15, 2009, pursuant to section 46 of the *Act*.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

Section 46(4) of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective on March 31, 2009.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$650.00 for January of 2009; \$650.00 for February of 2009; and \$650.00 for March of 2009, and that the Landlord is entitled to compensation in that amount.

I find that the Landlord's 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.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$325.51, in partial satisfaction of the monetary claim.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on March 31, 2009. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$2,000.00, which is comprised on \$1,950.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$325.51, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,674.49. 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: March 26, 2009.