



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MT, CNR, OLC, RP, RPP, LRE, OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications between the parties.

The Landlord filed an 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. At the hearing the Landlord withdrew her application for an Order of Possession, as the rental unit has been vacated.

The Tenants filed an Application for Dispute Resolution, in which the Tenants made an application to set aside the Notice to End Tenancy; for more time to apply to set aside the Notice; for a monetary Order for money owed or for compensation for damage or loss; for an Order requiring the Landlord to comply with the Act, to make repairs, to return the Tenant's personal property, and to set limits on the Landlord's right to enter; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution

The Tenants did not attend in support of their Application for Dispute Resolution. I find that the Tenants failed to diligently pursue the Application and I therefore dismiss their Application without leave to reapply.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the each Tenant via registered mail at the address noted on the Application, on February 11, 2009. Canada Post receipts, with tracking numbers, for both packages were submitted. The Canada Post website shows both packages were delivered to the Tenants. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is 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 *Act*.

Background and Evidence

The Landlord stated that this tenancy began on February 01, 2009; that the Tenants agreed to pay monthly rent of \$950.00; that the Tenants paid a security deposit of \$450.00 on January 21, 2009; and that the Tenants had moved most of their property from the rental unit by February 16, 2008, but they had possession of the unit until February 28, 2009. The Landlord stated that no rent was paid for February of 2009.

The Landlord stated that she personally served the Tenants with a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of February 14, 2009, on February 04, 2009. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Landlord is seeking compensation for unpaid rent from February of 2009.

The Landlord is also seeking compensation for loss of revenue for the month of March. She stated that she began to advertise the rental unit on February 04, 2009 after she served the Ten Day Notice to End Tenancy. She stated on February 15, 2009 she found new tenants for March 15, 2009. She stated that her agreement with these tenants fell through on March 07, 2009, and that she received no rent for the month of March.

Analysis

In the absence of evidence to the contrary, I find this tenancy began on February 01, 2009; that the Tenants were required to pay monthly rent of \$950.00; that the Tenants paid a security deposit of \$450.00 on January 21, 2009; that the Tenants were served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on February 14, 2009, pursuant to section 46 of the *Act*; and that the Tenants did vacate the rental unit on February 28, 2009.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. In the absence of evidence to the contrary, I find that the Tenants did not pay the rent that was due for February of 2009 and that they, therefore, owe the Landlord \$950.00 in rent for that period.

I find that this tenancy ended early because the Tenants did not comply with the *Act* when they did not pay their rent when it was due. I find that the Tenants' actions prevented the Landlord from finding new tenants for March 01, 2009, as the Landlord did not have reasonable notice that the rental unit would be vacated at the end of February. I find that the Landlord is therefore entitled to compensation for loss of revenue from March 01, 2009 and March 14, 2009, in the amount of \$475.00.

I dismiss the Landlord's application for compensation for loss of revenue from March 15, 2009 to March 31, 2009, as the Landlord did have a new tenant for that period. Although the tenancy with the new tenant did not proceed on March 15, 2009, I find that the new tenant is responsible for any loss of revenue incurred for that period.

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, in the amount of \$450.00, in partial satisfaction of the monetary claim. Due to the limited duration of the tenancy, no interest has accrued on the security deposit.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,475.00, which is comprised on \$950.00 in unpaid rent from February; \$475.00 in loss of revenue from March; 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 \$450.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,025.00. 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.
