



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 he personally served the male Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on February 11, 2009. The Witness for the Landlord stated that he was with the Landlord on February 11, 2009 when the Landlord served the hearing documents to the Tenant. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenants did not appear 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 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

The Landlord stated that this tenancy began on January 01, 2009; that the Tenants are required to pay monthly rent of \$1000.00; and that the Tenants paid a security deposit of \$250.00 on December 26, 2008 and a security deposit of \$250.00 on January 15, 2009.

The Landlord stated that he personally served the male Tenant with a Ten Day Notice to End Tenancy for non-payment of rent on February 04, 2009. He stated that he submitted a copy of the Notice to End Tenancy to the Residential Tenancy Branch,

however the document was not before me in evidence and could not be located in the file related to this hearing. The Landlord was given the opportunity to fax this Ten Day Notice to the Residential Tenancy Branch prior to March 14, 2009.

The Landlord stated that he personally served the male Tenant with a second Ten Day Notice to End Tenancy for non-payment of rent on February 11, 2009.

The Witness for the Landlord stated that he was with the Landlord when he served the Ten Day Notice to End Tenancy on February 04, 2009 and February 11, 2009.

The Landlord submitted a Mutual Agreement to End Tenancy that was signed by the Landlord and the female Tenant on February 17, 2009. This agreement indicates that the Tenant has agreed to vacate the rental unit on February 18, 2009. The Landlord stated that the Tenants are still occupying the rental unit.

The Landlord stated that the Tenants paid their rent for February on February 17, 2009, at which time they were issued a note that indicates that the rent was being accepted for "use and occupancy only". The Landlord did not submit a copy of the note that indicates that the rent was accepted for "use and occupancy only".

The Landlord stated that the Tenants have not paid any rent for March of 2009. Although the Landlord did not claim for unpaid rent from March of 2009 in his Application for Dispute Resolution, the Application was amended to include a claim for that outstanding rent as the Tenants knew that they are required to pay rent.

Analysis

Upon reviewing the evidence that was submitted in regard to this Application for Dispute Resolution, I am satisfied I can render a decision in this matter without viewing the Ten Day Notice to End Tenancy that was dated February 04, 2009.

In the absence of evidence to the contrary, I find that the Tenants were served with a Notice to End Tenancy on February 11, 2009, which required the Tenants to vacate the rental unit on February 22, 2009, pursuant to section 46 of the *Act*.

Section 46 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. In the circumstances before me I have no evidence that the Tenants filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy that was served on them on February 11, 2009. I also have no evidence to show that the Tenants paid the outstanding rent for February within five days of receiving the Notice to End Tenancy on February 11, 2009. I therefore conclude that the Tenants accepted that the tenancy was ending, pursuant to section 46(5) of the *Act*.

On this basis I will grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants.

In the absence of evidence to the contrary, I find that the Tenants have not paid any rent for March of 2009 and that they are obligated to pay rent in the amount of \$1,000.00 for March of 2009.

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 \$500.06, in partial satisfaction of the monetary claim.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenant. 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 \$1,050.00, which is comprised on \$1,000.00 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 \$500.46, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$499.54. 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 10, 2009
