



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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, a monetary Order for money owed or compensation for damage or loss; 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 and the Tenant agree that the Tenant and a male co-tenant signed a tenancy agreement for this rental unit, both of whom were named on the Application for Dispute Resolution. The Landlord stated that she placed one copy of the Application for Dispute Resolution and Notice of Hearing for each tenant in one envelope and mailed that envelope, via registered mail, to the rental unit. This envelope was addressed to both respondents. The female Tenant stated that she received the package that was mailed to the rental unit. I find that the female Tenant was properly served with notice of this dispute resolution proceeding.

I have no evidence to show that the male tenant was served with notice of this hearing. The female Tenant stated that she did not give a copy of the Application for Dispute Resolution and Notice of Hearing to the male Tenant.

The landlord has applied for a monetary Order which requires that the Landlord serve each respondent with a copy of the Application for Dispute Resolution and Notice of Hearing documents, as set out under Section 3.1 of the Residential Tenancy Branch Rules of Procedures. As there is no evidence to show that the male Tenant was served with copies of the Application for Dispute Resolution Package and Notice of Hearing, the Landlord was given the opportunity to amend the Application for Dispute Resolution or to withdraw the Application. The Landlord asked to amend the Application for Dispute Resolution to include only the female tenant who has been properly served with notice of this hearing. The Application for Dispute Resolution has been amended in accordance with the request of the Landlord.

The Landlord and the female Tenant were represented at the hearing. 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 **relevant** submissions to me.

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

A copy of a tenancy agreement between the Landlord, this Tenant and the male co-tenant was submitted in evidence. The agreement is signed by both Tenants but not by the Landlord. The agreement declares that this tenancy began on April 18, 2009 but that the Tenants were not required to pay rent for April of 2009 in exchange for cleaning and painting in the rental unit. The Tenant stated that she did not live in the rental unit until May 01, 2009, although she acknowledged that she had keys to the rental unit and that she moved personal property into the rental unit prior to May 01, 2009. The tenancy agreement declares that the Tenants were required to pay monthly rent of \$1,525.00 on the first day of each month, which is not disputed by the Tenant.

The Landlord and the Tenant agree that the Tenants paid a security deposit of \$762.50 on April 18, 2009.

A copy of a Condition Inspection Report was submitted in evidence. The Agent for Landlord and the Tenant agree that they completed this report on April 18, 2009. The Landlord stated that she did not receive a copy of this report until June 01, 2009, at which time she signed and dated the document. The Condition Inspection Report outlines several areas in the rental unit that need repair.

There is a notation on the second page of the report that lists several deficiencies in the rental unit that “needs to be addressed before June 15, 2009”. The Agent for the Landlord and the Tenant agree that they understood this notation to mean that these deficiencies would be repaired prior to June 15, 2009. There is also a notation on the

Residential Tenancy Branch
Ministry of Housing and Social Development

second page of the report that authorizes the Tenant to purchase two smoke detectors and one carbon monoxide detector, and to deduct the cost of those purchases from her June rent. The Tenant stated that she has not yet purchased a smoke detector or a carbon monoxide detector.

The Landlord and the Tenant agree that Tenant did not pay rent for June of 2009. The Tenant stated that she did not pay rent for June because the Landlord refused to reimburse her, in the amount of \$10.00, for photographs she took of an adjacent rental unit at the request of the Landlord.

The Landlord and the Tenant agree that Tenant did not pay rent for July of 2009. The Tenant stated that she did not pay rent for July because the Landlord had not completed the repairs that had been promised at the beginning of the tenancy.

The Landlord and the Tenant agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of June 12, 2009, was personally served on the Tenant on June 03, 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 Tenant repeatedly attempted to discuss the repairs that she alleges are needed in the rental unit and she was repeatedly advised that repairs are not relevant to the issue of unpaid rent. The Tenant insisted on discussing the repairs even when she was directly advised to refrain from discussing those matters. The Tenant's behaviour was disruptive to the hearing and, near the conclusion of the hearing, became abusive towards the Landlord, whom she repeatedly and loudly referred to as a "slum landlord". After the Tenant was given numerous opportunities to raise relevant issues, which were followed by continued references to the condition of the rental unit, the hearing was concluded.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord, which required her to pay monthly rent of \$1,525.00. Based on the undisputed evidence of both parties, I find that the Tenant did not pay any rent for June and July of 2009.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord **whether or not the landlord complies with this Act, the regulations or the tenancy agreement**, unless the tenant has a right under the *Act* to deduct a portion or all of the rent.

Residential Tenancy Branch
Ministry of Housing and Social Development

In the circumstances before me, the Tenant refused to pay rent for June of 2009 because of an alleged \$10.00 debt that related to photographs of a separate rental unit that the Tenant developed at the request of the Landlord. As this debt does not relate to this tenancy, it can not be considered grounds for withholding rent. I therefore find that the Tenant owes the Landlord \$1,525.00 in rent from June of 2009.

In the circumstances before me, the Tenant refused to pay rent for July of 2009 because of the Landlord did not complete certain repairs that she promised to complete prior to June 15, 2009. There is nothing in the Act that authorizes Tenants to arbitrarily withhold rent because the Landlord does not complete repairs to the rental unit. The appropriate remedy for the Tenant in this situation, would have been to file an Application for Dispute Resolution seeking authorization to reduce her rent in compensation for a reduction in the value of the tenancy agreement, pursuant to section 65(1), and/or for an Order requiring the Landlord to make repairs, pursuant to section 62(3) of the *Act*. As the Tenant did not have authorization or legal authority to withhold rent, I find that the Tenant owes the Landlord \$1,525.00 in rent from July of 2009.

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. Based on the undisputed evidence of the parties, I find that on June 03, 2009 the Tenant was served with a Notice to End Tenancy that declared the Tenant must vacate the rental unit on June 12, 2009, pursuant to section 46 of the *Act*.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant received this Notice on June 03, 2009, I find that the earliest effective date of the Notice is June 13, 2009.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was June 13, 2009.

As the Tenant did not pay rent when it was due and the Landlord served the appropriate notice, I find that the Landlord is authorized to end this tenancy pursuant to section 46 of the *Act*. On this basis, I find that the Landlord is entitled to an Order of Possession that is effective two days after it is served upon the Tenant.

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 \$762.50, in partial satisfaction of the monetary claim.



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

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 \$3,100.00, which is comprised of \$3,050.00 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, in the amount of \$762.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,337.50. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 21, 2009.

Dispute Resolution Officer