



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, FF

Introduction

This decision was corrected on January 15, 2010 to include the name of the second applicant, which was inadvertently omitted from the original decision, as a result of a Request for Clarification that was filed by the first named applicant.

This hearing was scheduled in response to cross applications.

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.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties 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; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and whether either party is entitled to recover the cost of filing an Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted a tenancy agreement that establishes this tenancy began on January 01, 2005 and that the Tenants are required to pay monthly rent on the first day of each month. The Agent for the Landlord and the Tenants agree that the Tenants are currently required to pay monthly rent of \$2,030.00 and that the Tenants paid a security deposit of \$937.50 on December 30, 2004.

The Agent for the Landlord and the Tenants agree that the Tenants did not pay any rent for October, November, and December of 2009. The male Tenant stated that they have been unable to pay the rent because they are awaiting a royalty payment, which is expected to arrive in the near future.

The Agent for the Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 19, 2009, on the door of the rental unit on October 09, 2009. The Notice declared that the Tenants owed \$2,030.00 in rent that was due on October 01, 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 male Tenant acknowledged locating the Notice to End Tenancy on October 12, 2009.

Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord that currently requires the Tenants to pay monthly rent of \$2,030.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the undisputed evidence, I find that the Tenants have not paid rent for October, November, and December of 2009. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$6,090.00 in outstanding rent to the 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. Based on the undisputed evidence, I find that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on October 09, 2009.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenants received the Notice to End Tenancy on October 11, 2009.

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 is deemed to have received this Notice on October 11, 2009, I find that the earliest effective date of the Notice is October 21, 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 October 21, 2009.

As the Landlord is entitled to end a tenancy for unpaid rent, pursuant to section 46(1), by serving proper notice and the Landlord has served the proper notice to end the tenancy, I find that the Landlord has the right to end this tenancy. As I do not have the authority to set aside the Notice to End Tenancy on compassionate grounds, I find that this tenancy shall end on the basis of the Ten Day Notice to End Tenancy.

As I have ordered the Tenants to pay rent for December of 2009, I hereby grant the Landlord an Order of Possession that is effective on December 31, 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 Tenants for the cost of this Application for Dispute Resolution.

I find that the Tenants' application has been without merit, and I dismiss their application to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenants' security deposit plus interest, in the amount of \$970.67, in partial satisfaction of the monetary claim, pursuant to section 72(2) of the *Act*.

Conclusion

The Landlord has been granted an Order of Possession that is effective December 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 \$7,110.00, which is comprised of \$6,090.00 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 \$970.67, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$6,139.33. 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: December 03, 2009.

Corrected: January 15, 2010

Dispute Resolution Officer