



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MND, 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, a monetary Order for damage to the rental unit; 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 his application for a monetary Order for damages, as he has not yet had the opportunity to ascertain the extent of damages to the rental unit.

This hearing was originally scheduled to be heard on January 04, 2010 but due to an administrative error a Dispute Resolution Officer did not dial into the teleconference call. Residential Tenancy Branch records show that the Landlord dialed into the teleconference on January 04, 2009 but the Tenant did not. The hearing of January 04, 2010 was reconvened at 1:30 on January 05, 2010 at the initiative of the Residential Tenancy Branch.

The Landlord stated that one package containing two copies of the Application for Dispute Resolution and Notice of Hearing for the hearing on January 04, 2010 were sent to the Tenants via registered mail at the service address noted on the Application, on December 16, 2009. A Canada Post receipt was submitted that shows the Landlord sent one package, which was addressed to both Tenants, to the rental unit on December 16, 2009.

The Landlord declared that he checked the Canada Post website and determined that the female Tenant had electronically recorded her signature to acknowledge receipt of the package that was mailed. The Canada Post website shows that both Tenants electronically registered their signature. The Landlord further declared that he had a conversation with the male Tenant on December 26, 2009, at which time the male Tenant informed him that they had received the documents mailed by the Landlord.

Based on the information provided by the Landlord and in the absence of evidence to the contrary, I find that copies of the Application for Dispute Resolution and Notice of Hearing are deemed to have been served to each Tenant 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 *Act*.

Background and Evidence

The Landlord stated that this tenancy began on June 01, 2009; that the Tenants are required to pay monthly rent of \$1,100.00 on the first day of each month; and that the Tenants paid a security deposit of \$550.00 and a pet damage deposit of \$550.00 on June 07, 2009.

The Landlord stated that the Tenants have not paid any rent for December of 2009 or January of 2010.

The Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 12, 2009 on the door of the rental unit on December 02, 2009. The Notice declared that the Tenants owed \$1,100.00 in rent that was due on December 01, 2009.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement with the Landlord that requires the Tenants to pay monthly rent of \$1,100.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants have not paid rent for December of 2009 or January of 2010. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,100.00 in rent for December of 2009 and \$550.00 in rent for the period between January 01, 2010 and January 15, 2010.

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 evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, which had a declared effective date of December 12, 2009, was posted on the door of the rental unit on December 02, 2009, pursuant to section 46 of the *Act*.

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 Tenant received the Notice to End Tenancy on December 05, 2009.

Section 46(1) of the *Act* stipulates that a Ten 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 December 05, 2009, I find that the earliest effective date of the Notice is December 15, 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 December 15, 2009.

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 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 find that the Landlord is entitled to an Order of Possession. As I have ordered the Tenants to pay rent unit January 15, 2010, I find that the Order of Possession shall be effective on January 15, 2010.

I find that the Landlord's application has merit and 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 and pet damage deposit, in the amount of \$1,100.00 pursuant to section 72(2)(b) of the *Act*.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on January 15, 2010. 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 \$1,700.00, which is comprised of \$1,650.00 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 and pet damage deposit, in the amount of \$1,100.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$600.00. 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.

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: January 05, 2010.

Dispute Resolution Officer