



Dispute Resolution Services

Page: 1

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.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

At the start of the hearing the Application was amended to include a monetary claim for unpaid February 2010, rent in the sum of \$1,377.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced in 1999. A deposit in the sum of \$600.00 was paid on June 1, 1999. The rent was most recently \$1,325.00 per month and effective January 1, 2010, increased within the allowable amount to \$1,377.00.

The tenants confirmed receipt of the 10 Day Notice for Unpaid Rent issued on December 30, 2009 and confirm that they have not paid rent or disputed the Notice.

Evidence submitted by the landlord indicates that the tenants have not made any rent payments since October 2009, when they were in arrears \$101.00. The tenancy agreement included a clause allowing a \$20.00 NSF fee; this was not contested by the tenants. The tenants owe rent in the sum of \$101.00 for October, \$1,345.00 for November, and December 2009 and \$1,377.00 for each of January and February 2010, plus one November NSF fee of \$20.00.

Analysis

I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on January 10, 2010, 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. The tenants exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served.

I find that the tenant has not paid rent in the amount of \$5,545.00 from October 2009 to February 2010 inclusive and one NSF fee in the sum of \$20.00, and that the landlord is entitled to compensation in the sum of \$5,565.00.

I find that the landlord's application has merit and 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 landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$661.34, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective two days after the notice has been served. This Order may be served on the tenants,

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 \$5615.00, which is comprised of \$5545.00 in unpaid rent, \$20.00 NSF fee 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 \$661.34, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$4,953.66**. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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: February 11, 2010.

Dispute Resolution Officer