

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 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

The Landlords and the Tenant agreed that the Tenant began to occupy the rental unit on November 22, 2008, and that she was required to pay monthly rent of \$925.00. The parties agree that the Tenant paid a security deposit of \$462.50 sometime during the second week in December of 2008.

The Tenant stated that Landlord #1 advised her that she would not be required to pay for rent in November due to the fact that her father was painting and tiling in the unit. The Landlord #1 stated that she did not advise the Tenant that she did not have to pay rent for the period in November. The Landlords contend that the Tenant owes \$277.00 in rent for the eight days in November that she occupied the rental unit. The Landlords contend that the Tenant still owes rent, in the amount of \$925.00, for rent from December of 2008. The Tenant stated that she paid her rent for December in cash

sometime prior to the middle of the month. She stated that she paid her December's rent in cash but did not receive a receipt.

The Tenant submitted a copy of a History Report from the Ministry of Employment and Income Assistance (MEIA). The document indicates that a MEIA employee contacted the Landlord on December 17, 2008, and was advised by the Landlord that the security deposit had been paid and that the rent is not in arrears. The Landlord#1 agreed that she did speak with an MEIA employee but she contends that she only advised the employee that the security deposit had been paid. She denies reporting that all of the rent had been paid.

The Landlords and the Tenant agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 18, 2009, was personally served on the Tenant on January 09, 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 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 Landlord #1 stated that the Tenant attempted to pay \$200.00 in rent on January 04, 2009, but the Landlords refused to accept that payment. The Tenant stated that she attempted to pay \$460.00 in rent on January 13 or 14, which represents a portion of the rent that was due for January of 2009. The Tenant stated that the Landlord refused the payment that was offered on January 13 or 14, 2009.

The Tenant attempted to address her concerns about several deficiencies in the rental unit, including an inoperable and unsafe furnace, although the furnace was not the subject of this dispute resolution hearing. Although the Landlords were willing to discuss a settlement agreement regarding compensation for being without a furnace, the Tenant declined the opportunity to discuss a settlement on that issue. The Tenant retains the right to file an Application for Dispute Resolution seeking compensation for deficiencies experienced during the tenancy.

Analysis

The evidence shows that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on January 18, 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 Tenant disputed the Notice to End Tenancy that was served on her on January 09, 2009. Although the Tenant

contends that she attempted to pay a portion of the outstanding rent for January on January 13 or 14 of 2009, there is not evidence that she paid all of the outstanding rent, as I required by section 46 of the Act. I therefore find that the Tenant accepted that the tenancy has ended, pursuant to section 46(5) of the Act. On this basis I will grant the Landlord an Order of Possession that is effective on February 28, 2009.

After hearing the contradictory evidence regarding the rent from November and December of 2008, I find that the Landlord has submitted insufficient evidence to show that the Tenant did not pay rent for a portion of November and for all of December. In reaching this conclusion, I was strongly influenced by the MEIA report which shows that the Landlord advised an MEIA employee that the rent was not in arrears on December 17, 2008. I find this report to be very compelling, as it was prepared by an independent party. On this basis, I dismiss the Landlord's application for compensation for rent from November and December of 2008.

The Landlords and the Tenants agree that the Tenant still owes rent, in the amount of \$925.00, for January of 2009, and I find that the Tenant is required to pay that amount to the Landlord.

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I find that the Landlords application has merit, and I find that the Landlords are entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlords are entitled to retain the Tenant's security deposit plus interest, in the amount of \$462.82, in partial satisfaction of the monetary claim. Interest on the deposit was calculated from December 15, 2009, as the exact date of payment is not known.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on February 28, 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 \$1,900.00, which is comprised on \$1,850.00 in unpaid rent from January and February of 2009 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 \$462.82, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,437.18. 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: February 23, 2009