



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, OPL, MNDC, 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 compensation for unpaid rent, an Order of possession, to retain all or part of the security deposit, for loss of rent revenue 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.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based upon a 1 Month Notice to End Tenancy due to the end of employment?

Is the landlord entitled to an Order of possession based upon a 10 Day Notice to End Tenancy?

Is the landlord entitled a monetary Order for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenant paid monthly rent in the sum of \$350.00 which was to revert to \$700.00 per month, her rent paid prior to starting employment with the landlord, if the employment were to end. The tenant paid a deposit in the sum of \$350.00 on January 15, 2008.

The landlord acknowledged that the tenant was fired on December 15, 2009, as a result a One Month Notice to End Tenancy was issued and that the tenant had paid \$350.00 rent on December 1, 2009.

When given her last paycheque the landlord had deducted \$350.00 in error for December rent owed. The tenant did not pay January, February or March, 2010 rent.

The landlord acknowledged that December rent is paid in full and that the \$350.00 deducted from the final pay cheque may be applied toward unpaid rent owed beyond December

During the hearing the parties reached a mutual agreement that the tenant would move out no later than March 15, 2010 at 1 p.m.

Analysis

The tenant has agreed to move out of the rental unit no later than 1 p.m. on March 15, 2010 and I find that the landlord is entitled to an Order of possession for that date.

I find that the 10 Day Notice to End Tenancy issued on January 4, 2010, was of no force or effect as the tenant did not owe rent, as she was entitled, as provided by section 51 of the Act, to the equivalent of one month's rent, as the result of the Notice issued on December 15, 2009, under section 49 of the Act. The tenant did not apply to dispute this Notice.

I find that, pursuant to section 51 (1) of the Act, that the tenant is entitled to receive the equivalent of one month's rent payable under the tenancy agreement in the sum of \$700.00 for January 2010.

I find that the tenant owes \$700.00 per month rent for February and March. I find that the tenant overpaid December rent in the sum of \$350.00; which I will apply to unpaid February rent owed. Therefore, the landlord is entitled to unpaid February rent in the amount of \$350.00 and March rent in the sum of \$700.00.

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 plus interest, in the amount of \$355.05, in partial satisfaction of the monetary claim.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent issued on January 4, 2010, is of no force or effect.

The tenant and landlord reached a mutual agreement that the tenant would move out by 1 p.m. on March 15, 2010; based on the undisputed 1 Month Notice to End Tenancy issued on December 15, 2009.

The landlord has been granted an Order of Possession that is **effective March 15, 2010 at 1 p.m.** 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 \$1,100.00, which is comprised of \$1,050 in unpaid February and March 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 \$355.05, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$744.95**. 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: March 08, 2010.

Dispute Resolution Officer