



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, & FF

Introduction

This hearing dealt with an application for Dispute Resolution by the landlord seeking an Order of Possession and a monetary Order due to the tenant's failure to pay rent. The landlord also seeks to retain the tenant's security deposit in partial satisfaction of this claim.

The landlord stated that the tenant was served with notice of this application and hearing by registered mail on November 17, 2010.

Based on the documentary evidence provided by the landlord, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

The landlord named two respondents in this application, however, I find that there was only one tenant based on the landlord's evidence that all the terms of the tenancy were discussed with the male tenant and the rent was paid by the male tenant and the 10 day Notice to End Tenancy Due to Unpaid Rent was issued only to the male tenant.

Issue(s) to be Decided

Has the tenant breached the tenancy agreement, *Act* or regulations entitling the landlord to an Order of Possession and monetary relief?

Background and Evidence

The landlord did not have a written tenancy agreement, but testified that the tenancy commenced on March 1, 2008 for the monthly rent of \$1,100.00 and a security deposit of \$550.00 paid on February 17, 2008.

The landlord testified that the tenant was served with the notice to end tenancy when it sent to the rental unit by registered mail on October 17, 2010.

The landlord provided a copy of the 10 day Notice to End Tenancy due to Unpaid Rent which was dated October 13, 2010 and declares that the tenant failed to pay the rent owed of \$4,200.00 on October 1, 2010.

The landlord testified that the tenant has failed to pay the rent owed since January 2010 and provided a breakdown of the rent owed versus the rent paid:

Month	Rent Owed by Month	Month	Rent Tenant Paid
February 2010	\$1,100.00	February 16, 2010	\$300.00
March 2010	\$1,100.00	March 2010	\$0.00
April 2010	\$1,100.00	April 30, 2010	\$350.00
May 2010	\$1,100.00	May 5 & 10, 2010	\$850.00
June 2010	\$1,100.00	June 21, 2010	\$1,100.00
July 2010	\$1,100.00	July 14 & 19, 2010	\$1,400.00
August 2010	\$1,100.00	August 4, 2010	\$1,100.00
September 2010	\$1,100.00	September 2010	\$0.00
October 2010	\$1,100.00	October 2010	\$0.00
TOTAL	\$11,000.00		\$5,400

Based on the landlord's records the tenant failed to pay \$5,400.00 in the rent owed from January to October 2010. In addition, the landlord testified that the tenant failed to pay the rent owed for November and December 2010 for \$2,200.00. The total outstanding rent owed according to the landlord is \$7,800.00.

The landlord has reduced this amount by \$1,400.00 based on money she states that is owed to the tenant for work he completed on the landlord's car and assistance the tenant provided in helping the landlord move to a new apartment. Therefore, the landlord is seeking the outstanding rent owed of **\$6,400.00**.

The landlord also seeks an Order of Possession, recovery of the filing fee paid for this application and to retain the tenant's security deposit in partial satisfaction of this claim.

Analysis

Based on the evidence provided by the landlord and in the absence of evidence to the contrary and on the balance of probabilities, I find that the tenant has failed to pay the rent owed of \$7,800.00 from January to December 2010 as required by the tenancy agreement. I accept that the landlord has reduced this amount to \$6,400.00 based on other arrangements made with the tenant.

I find that the tenant was served with a 10 day Notice to End Tenancy due to Unpaid rent when it was sent to the tenant by registered mail. I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

I find that the tenant failed to either pay the outstanding rent or to file an application for Dispute Resolution to dispute the notice in the five days provided by section 46(4) of the *Act*.

Pursuant to section 46(5) of the *Act*, I find that the tenant has conclusively accepted the end of the tenancy agreement effective November 2, 2010 and on this basis I grant the landlord's application seeking an Order of Possession for the rental unit.

I am satisfied by the evidence provided by the landlord, and in the absence of any evidence from the tenant, that the tenant failed to pay rent owed for the sum of \$6,400.00 in outstanding rent. I Order that the tenant to reimburse the landlord the \$100.00 filing fee paid by the landlord for this application. As a result, I find that the landlord has established a total monetary claim for the sum of \$6,500.00. From this sum I order that the landlord may retain the tenant's security deposit of \$550.00 in partial satisfaction of this claim.

I grant the landlord a monetary Order for the remaining sum of **\$5,950.00** pursuant to section 67 of the *Act*.

Conclusion

I find that the landlord is entitled to an Order of Possession of the rental unit effective **two (2) days** after it has been served upon the tenant. This Order may be 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 due to breach of the tenancy agreement by the tenant for the sum of **\$5,950.00**. This Order must be served on the tenant. This Order may be 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 07, 2010.

Dispute Resolution Officer