



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNS, & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary claim due to the tenants' failure to pay rent. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Have the tenants breached the tenancy agreement entitling the landlord to an Order of Possession and monetary relief?

Background and Evidence

This tenancy began on July 16, 2008 for the monthly rent of \$1,250.00 and a \$625.00 security deposit.

The landlord stated that he tenants have failed to pay the rent owed for February, October and December 2010. The landlord stated that the tenant made the following payments towards the outstanding rent: \$800.00 on November 16, 2010, \$450.00 on November 25, 2010 and \$300.00 on December 2, 2010. The landlord states that the tenant was issued receipt for 'use and occupancy only' for these payments.

The landlord seeks an Order of Possession and a monetary claim for the unpaid rent. The landlord so requests to retain the tenants' security deposit in partial satisfaction of this claim.

The tenants do not dispute the outstanding rent owed for October and December 2010 and did not dispute the notice to end tenancy. The tenants only dispute the outstanding rent from February 2010 arguing that they had a tentative oral agreement with the landlord to deduct or exchange the rent owed against repairs completed to the rental unit by the tenants.

The landlord agreed to withdraw the claim for unpaid rent from February, with leave to re-apply, so that the parties could attempt to negotiate this issue.

Analysis

Based on the evidence provided by the parties and on the balance of probabilities, I find that the tenants have failed to pay the rent owed of \$1,625.00.00 for October and December 2010 as required by the tenancy agreement. I dismiss the landlord claim for a monetary claim related to unpaid rent for February 2010 with leave to re-apply.

I find that the tenants were served with a 10 day Notice to End Tenancy due to Unpaid rent and that the tenants 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 25, 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 parties that the tenants failed to pay rent owed for the sum of \$2,200.00 for the months of October and December 2010 less the \$300.00 payment made by the tenants on December 2, 2010. I Order that the tenants reimburse the landlord the \$50.00 filing fee paid for this application. From this sum I order that the landlord may retain the tenants' security deposit of \$625.00 in partial satisfaction of this claim.

As a result, I find that the landlord has established a total monetary claim for the sum of \$1,625.00. I grant the landlord a monetary Order for the remaining sum of **\$1,625.00** pursuant to section 67 of the *Act*.



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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 **\$1,625.00**. 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 23, 2010.

Residential Tenancy Branch