



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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, a monetary Order for money owed or compensation for damage or loss, 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, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenants provided their correct names and they did not oppose the Landlord's request to amend his Application for Dispute Resolution to correctly identify the Tenants, so the Landlord's Application for Dispute Resolution has been amended accordingly.

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 Landlord and the Tenant agree that this tenancy began on, or about, February 12, 2009; that the Tenants agreed to pay monthly rent of \$600.00 on the first day of each month; that the Tenants paid a security deposit of \$300.00 on, or about, February 15, 2009; and that the Tenants have not paid rent for October of 2010, November of 2010, December of 2010, and January of 2011.

The Landlord and the female Tenant stated agreed that was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of



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November 28, 2010, on November 28, 2010. The Notice declared that the Tenants owed \$1,200.00 in rent that was due on November 01, 2010.

Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord that requires the Tenants to pay monthly rent of \$600.00 on the first day of each month.

I find that the Tenants currently owe rent in the amount of \$600.00 that was due on October 01, 2010; \$600.00 that was due on November 01, 2010; \$600.00 that was due on December 01, 2010; and \$600.00 that was due on January 01, 2011. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$2,400.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. I find that the female Tenant was personally served with a Notice to End Tenancy, pursuant to section 46 of the *Act*, on November 28, 2010.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant received this Notice on November 28, 2010, I find that the earliest effective date of the Notice is December 08, 2010.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 08, 2010.

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 exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.



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Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. 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 \$2,450.00, which is comprised of \$2,400.00 in unpaid 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, in the amount of \$300.00, in partial satisfaction of the monetary claim, pursuant to section 72(2) of the Act.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,150.00. 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: January 12, 2011.

Residential Tenancy Branch