



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MND, 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 damage to the rental unit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

At the hearing the Landlord withdrew the application for a monetary Order for damage to the rental unit, as he did not intend to make that claim in this Application for Dispute Resolution. The Landlord asked that the Tenant's security deposit be applied against any monetary claim established at this hearing. At the hearing the Landlord withdrew the application for an Order of Possession, as the Tenants vacated the rental unit on February 01, 2011 or February 02, 2011.

The Landlord and the female Tenant were represented at the hearing. The female Tenant stated that she received Notice of this hearing by registered mail. The Tenant submitted evidence to the Residential Tenancy Branch on February 07, 2011. The parties 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 Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant via registered mail at the service address noted on the Application, on February 03, 2011. The female Tenant stated that the service address on the Application was provided to the Landlord as a forwarding address for both Tenants and that she was representing the male Tenant at the hearing. These documents are deemed to have been served on the male Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the male Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2009; that the Tenants were required to pay monthly rent of \$900.00 on the first day of each month; and that the Tenants paid a security deposit of \$450.00.

The Landlord and the Tenant agree that the Tenants always paid their rent in cash and that the Landlord only provided a rent receipt for one monthly rent payment during this tenancy.

The Landlord and the Tenant agree that the Tenants did not pay rent for January of 2011. The Landlord contends that the Tenants paid rent of \$300.00 on an unknown date in December of 2010; \$250.00 on a second unknown date in December of 2010; and \$150.00 on a third unknown date in December of 2010, for a total of \$700.00. The Tenant contends that the Tenants paid rent of \$300.00 on December 01, 2010; \$100.00 on December 14, 2010; \$300.00 on December 15, 2010; and \$100.00 on December 17, 2010, for a total of \$800.00.

Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$900.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord whether or not the Landlord complies with the Act.

Based on the undisputed evidence presented at the hearing, I find that the Tenants have not paid \$900.00 in rent from January of 2011. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$900.00 in outstanding rent from January of 2011.

Based on the undisputed evidence presented at the hearing, I find that the Tenants have not paid \$100.00 in rent from December of 2010. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$100.00 in outstanding rent from December of 2010.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In regards to the claim for another \$100.00 in unpaid rent from December of 2010, the burden of proving that this amount is owed rests with the Landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been

made. When a tenant is then unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has historically made cash payments and has never, or rarely, been provided with a receipt, there is no expectation that the tenant will provide a receipt for a cash payment that has been made. In these circumstances the Landlord's failure to regularly provide receipts for cash payments made during this tenancy has significantly impaired the Tenants' ability to prove that the Tenants did pay \$800.00 in cash for rent from December of 2010, as opposed to the \$700.00 that the Landlord contends was paid. The Landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate the Landlord's claim that the Tenants only paid \$700.00 in rent for December of 2010. On this basis, I dismiss the Landlord's claim for an additional \$100.00 in unpaid rent from December of 2010.

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.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,050.00, which is comprised of \$1,000.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(1) of the *Act*, I hereby authorize the Landlord to retain the Tenant's security deposit, in the amount of \$450.00, in partial satisfaction of this monetary claim. No interest is payable on the security deposits paid in 2009.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$600.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: February 14, 2011.
