Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, 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 an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, 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 Landlord submitted evidence to the Residential Tenancy Branch and the Agent for the Landlord stated a copy of that evidence was served to the Tenant by registered mail. The Tenant acknowledged receipt of this evidence from the Landlord.

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 Agent for the Landlord and the Tenant agree that this tenancy began on January 01, 2010; that the Tenant is currently required to pay monthly rent of $954.00 on the first day of each month; that the Tenant paid a security deposit of $438.00; and that the Tenant did not pay rent for January or February of 2011.

The Agent for the Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 25, 2011, was given to a friend of the Tenant on January 11, 2011. The Tenant stated that he received the Notice to End Tenancy from his friend on January 11, 2011.

Analysis

Based on the undisputed evidence presented at the hearing evidence, I find that the Tenant is currently required to pay monthly rent of $954.00 on the first day of each month and he did not pay his rent for January or February of 2011.
As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay $1,908.00 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 ten days if appropriate notice is given to the tenant. As the Tenant acknowledged receiving the Ten Day Notice to End Tenancy, served pursuant to section 46(1) of the *Act*, from his friend on January 11, 2011, I find that he has been sufficiently served that document on that date, pursuant to section 71(2)(b) of the *Act*.

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 find that the Landlord is entitled to 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.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on March 07, 2011. I would have made this Order of Possession effective on February 28, 2011 however the Agent for the Landlord requested the later date to provide the Tenant with a more reasonable opportunity to vacate the rental unit.   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 $1,958.00, which is comprised of $1,908.00 in unpaid rent and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I authorize the Landlord to keep the Tenant's security deposit of $438.00, 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 $1,520.00. 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: February 25, 2011.

_____
Residential Tenancy Branch