



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MND, 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, a monetary Order for damage to the rental unit, 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.

The Landlord withdrew the claim for damage to the rental unit at the hearing. The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for damages if the Tenants do not leave the rental unit undamaged, except for reasonable wear and tear, and reasonably clean at the end of the tenancy.

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 Agent for the Landlord stated that he personally served evidence for this hearing to the female Tenant on February 17, 2011 when he served her with copies of the Application for Dispute Resolution and Notice of Hearing. The female Tenant acknowledged receipt of the Application for Dispute Resolution and Notice of Hearing but she denied being served with evidence at that time. Although the Agent for the Landlord stated that service was witnessed by another tenant, no evidence was submitted from the individual who witnessed service.

As the Landlord has not established that a copy of the evidence was served to the Tenant, I decline to accept most of the evidence submitted by the Landlord. The Ten Day Notice to End Tenancy was accepted as evidence as the Tenants had a copy of that Notice with them at the time of this hearing.

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 the Tenants entered into a verbal tenancy agreement for this rental unit; that their tenancy began in December of 2010; that the Tenants are each required to pay monthly rent of \$400.00 on the first day of each month; that the Tenants paid a security deposit of \$200.00; and that the Tenants did not pay any of the rent that was due on February 01, 2011.

The Agent for the Landlord stated that he personally served the male Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 20, 2011 on February 10, 2011. The Notice declared that the Tenant owed \$800.00 in rent that was due on February 01, 2011. The Tenants acknowledge receiving the Notice to End Tenancy on February 10, 2011, although they contend it was found under their front door.

The female Tenant stated that she was unable to pay her portion of the rent because she receives financial assistance from the Ministry of Income and Employment Assistance and they withheld her rent funding from February of 2011 because the Landlord advised the Ministry that she no longer resided at the rental unit.

The Landlord stated that she did have a conversation with the Ministry of Income and Employment Assistance at which time she told them she had not been paid for rent from February of 2011. She stated that she did not tell the Ministry that the Tenant did not reside at the rental unit.

The male Tenant stated that he offered to pay his portion of the rent for February of 2011 but the Agent for the Landlord advised him that all of the rent must be paid.

The Landlord stated that she is willing to have the tenancy continue until March 15, 2011 providing the Tenants pay the rent of \$400.00 for the period between March 01, 2011 and March 15, 2011. The Tenants stated that they would like to remain in the rental unit until March 15, 2011.

Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenants were each required to pay monthly rent of \$400.00 on the first day of each month; that the Tenants paid a security deposit of \$200.00; and that the Tenants did not pay any of the rent that was due on February 01, 2011.

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. Based on the

undisputed evidence presented at the hearing, I find that the Tenants received a Ten Day Notice to End Tenancy on February 10, 2011. Regardless of whether this Notice to End Tenancy was personally served to the male Tenant or it was found under their door, I find, pursuant to section 71(2)(b) of the *Act*, that they received the Notice on February 10, 2011.

As the Tenants acknowledge that they did not pay all of the rent that was due on February 01, 2011 and the Landlord served them with a Ten Day Notice to End Tenancy, I find that the Landlord had the grounds to end this tenancy pursuant to section 46(1) of the *Act*.

In reaching this conclusion, I placed no weight on the female Tenant's statement that she was unable to pay her rent because the Ministry of Income and Employment Assistance was withholding her rent benefits. I placed no weight on this testimony as the Tenant produced no evidence to corroborate her statement that the Landlord interfered with her ability to collect her rent benefits or that refutes the Landlord's statement that she did nothing to interfere with the Tenant's rent benefits.

In reaching this conclusion, I placed no weight on the male Tenant's statement that the Landlord refused his offer to pay his portion of the rent. Even if the Landlord had accepted the male Tenant's rent payment of \$400.00, I find that the Landlord would have had grounds to end the tenancy pursuant to section 46 of the *Act* because rent of \$400.00 would still have been outstanding.

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

As the Tenants did not pay rent of \$800.00 that they were required to pay on February 01, 2011, I find that they must now pay that amount to the Landlord. As the parties agreed to continue this tenancy until March 15, 2011, I find that the Tenants must pay \$400.00 to the Landlord for the first half of March of 2011.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenants 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 15, 2011. This Order may be served on the Tenants, 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 \$1,250.00, which is comprised of \$1,200.00 in rent for February of 2011 and the first half of March of 2011, plus \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I authorize the Landlord to retain the Tenants' security deposit of \$200.00, pursuant to section 72(2) of the *Act*, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,050.00. 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 25, 2011.

Residential Tenancy Branch