



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes O, (MNDC)

Introduction

This matter dealt with an application by the Tenants to recover an alleged overpayment of rent.

The Tenant said she served the Landlord in person on January 27, 2011 with a copy of the Application and Notice of Hearing (the “hearing package”). The Tenant said the Landlord ripped up the documents and assaulted her for which she was charged with an offence but she believes the Landlord was not under any orders that would have prevented her (or an agent acting on her behalf) from participating in this hearing. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

Issue(s) to be Decided

1. Are the Tenants entitled to recover an overpayment of rent?

Background and Evidence

This month-to-month tenancy started on August 23, 2010 and ended on February 1, 2011 when the Tenants moved out. Rent was \$600.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$300.00 at the beginning of the tenancy.

The Tenant said her rent for February 2011 was paid on her behalf by the Ministry of Employment and Income Assistance directly to the Landlord on January 19, 2011. The Tenant said she gave the Landlord written notice on January 24, 2011 that she was ending the tenancy on February 28, 2011, however the Landlord demanded instead that she move out on February 1, 2011 and refused to return the Tenants’ rent payment for February 2011.

Analysis

Based on the evidence of the Tenants and in the absence of any evidence from the Landlord to the contrary, I find that the Landlord ended the tenancy on February 1, 2011

and therefore is not entitled to retain the Tenants' rent for that month. Consequently, I find that the Tenants are entitled to recover an overpayment of rent in the amount of \$600.00.

Conclusion

A Monetary Order in the amount of **\$600.00** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 10, 2011.

Residential Tenancy Branch