



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, CNR, OLC, ERP, RP, PSF, RR FF

Introduction

This was a cross-Application hearing.

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 and damages to the rental unit, to retain all or part of the security deposit, and to recover the filing fee from the male tenant for the cost of this Application for Dispute Resolution.

The two tenants applied to cancel a Notice ending tenancy for unpaid rent, a monetary Order for the cost of emergency repairs and damage or loss under the Act, an Order that the landlord comply with the Act, make repairs and provide services or facilities required by law, to allow the tenants to reduce rent for repairs for services or facilities agreed upon but not provided and to recover the filing fee costs from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlord served the tenant Notice of this hearing sent via registered mail on February 25, 2011; the tenant confirmed receipt of the registered mail notice but had yet to retrieve the package from the postal station. I found the landlord's Notice of hearing was served to the tenant effective February 30, 2011.

The tenants failed to serve the landlord with Notice of their hearing. The tenants submitted their Application on February 21, 2011; on the fifth day after they received a 10 Day Notice ending tenancy, issued on February 13, 2011, that was posted to their door on February 16, 2011.

The tenants did not submit any evidence of the monetary claim made in relation to emergency repairs, which resulted in deductions from rent owed from December, 2010, onward. No verification supporting the rent reductions made were submitted by the tenants. The tenants requested an adjournment of their hearing; which I declined, as the tenants had not served the landlord with Notice of their hearing.

Despite their failure to serve the landlord with Notice of their hearing; the tenants did not withdraw or cancel their hearing scheduled to be heard with the landlord's Application today. During the hearing the tenants were informed that the absence of evidence indicated a failure to diligently pursue their Application. The tenants stated that there had been delays in obtaining evidence; however, I replied that deductions made from rent owed, for legitimate emergency repairs in December, 2010 onward, would have been based on verifiable evidence of costs incurred by the tenants at the time the repairs had been made.

Further, the tenant's Application failed to include a detailed calculation of the \$8,163.13 monetary claim made.

Therefore, despite the tenants, failure to serve the landlord with their hearing package and Application, I denied the request for an adjournment and find, pursuant to sections 59(2) and 62(4) of the Act, that the tenant's Application is dismissed as it failed to disclose the full particulars of the claim made and demonstrated no reasonable grounds for the claim made.

Mutually Settled Agreement – End of Tenancy

During the hearing the parties agreed to an end of tenancy, effective no later than March 13, 2011, at 1 p.m. The parties also agreed that the landlord should be issued an Order of possession that may be served no earlier than March 13, 2011, at 1 p.m.

Monetary Claim

The parties agreed that this tenancy commenced in November, 2008; a deposit in the sum of \$375.00 was paid at that time and that rent is currently \$1,050.00 per month.

The tenant confirmed that he paid \$750.00 in each of December 2010, and January 2011, and that rent owed for February and March, 2011 has not been paid.

Therefore, I find that the landlord is entitled to compensation for unpaid rent from December 2010, to March 2011, inclusive, in the sum of \$2,700.00.

I find that the landlord may retain the deposit plus interest in the sum of \$375.94 in partial satisfaction of the claim.

Conclusion

The parties mutually agreed to an end of tenancy effective March 13, 2011, at 1 p.m.

Based upon the mutual agreement of the parties the landlord has been granted an Order of possession that is effective March 13, 2011, at 1 p.m. This Order may be served on the tenant no earlier than March 13, 2011, at 1 p.m., 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 \$2,750.00, which is comprised of \$2,700.00 in unpaid December, 2010 to March, 2011, inclusive, 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 plus interest, in the amount of \$375.94, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,374.06. 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.

Dated: March 08, 2011.

Residential Tenancy Branch