



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on January 19, 2005. Rent is \$647.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$292.50 at the beginning of the tenancy.

The Landlord's agent said the Tenant had rent arrears of \$172.47 for January 2011 and did not pay rent for February and March 2011. Consequently, on February 6, 2011, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2011 by posting it to the rental unit door. The Landlord's agent said the Tenant made a payment of \$300.00 on March 1, 2011 for which he was given a receipt stating the payment was accepted for "use and occupancy only."

The Tenant admitted that he had rent arrears for January but claimed they were \$122.47 and that the amount claimed by the Landlord included two late fees of \$25.00 each. The Tenant also admitted that he had rent arrears for February and March 2011. The Tenant claimed, however, that the Landlord agreed that he could pay those arrears once he received his income tax refund. The Tenant also claimed that his receipt for his payment on March 1, 2011 only stated that it was accepted as a "partial payment for February rent."

Analysis

Although the Tenant did not apply for dispute resolution to dispute the 10 Day Notice dated February 6, 2011, I find that this is of no consequence because I also find that the Landlord reinstated the tenancy when it accepted the Tenant's payment of \$300.00 on March 1, 2011 "in payment of rent." The Landlord's agent admitted that she was unaware of what information was on the Tenant's receipt and therefore I conclude that the Tenant did have an agreement with one of the Landlord's agents that the tenancy would not end as long as he paid the rent arrears when he received his income tax refund. As a result, the 10 Day Notice dated February 6, 2011 is cancelled and the Landlord's application for an Order of Possession is dismissed without leave to reapply.

I also find that there are rent arrears of \$122.47 for January 2011 and that the amount claimed on the Landlord's application for that month included two late fees. I find that the Landlord is entitled to claim only one late fee for January 2011 of \$25.00 pursuant to a term of the tenancy agreement to that effect. I also find that the Landlord is entitled to recover unpaid rent of \$347.47 for February 2011 and \$647.47 for March 2011 as well as the \$50.00 filing fee for this proceeding. As the tenancy will not be ending however, the Landlord's application to keep the Tenant's security deposit is dismissed with leave to reapply.

Conclusion

The Landlord's application for an Order of Possession (based on the 10 Day Notice to End Tenancy dated February 6, 2011) is dismissed without leave to reapply. The Landlord's application to keep the Tenant's security deposit is dismissed with leave to reapply. A Monetary Order in the amount of **\$1,197.41** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: March 21, 2011.

Residential Tenancy Branch