



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, 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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew his application for an Order of Possession, as the rental unit has been vacated.

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.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on January 06, 2011 and that the Tenant was required to pay monthly rent of \$850.00 on the first day of each month, although he was only required to pay pro-rated rent of \$665.00 for January of 2011.

The Landlord and the Tenant agree that since this tenancy began the Tenant has only paid \$825.00 to the Landlord, although neither party is clear on whether a portion of this payment was a security deposit. The parties agree that \$325.00 was paid on January 06, 2011 and the remaining \$500.00 was paid on February 24, 2011. At the hearing the parties agreed that the \$825.00 that has been paid will be considered rent payments.

The Landlord and the Tenant agree that the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 18, 2011, on February 08, 2011.

The Landlord and the Tenant agree that the rental unit was vacated on March 04, 2011. The Tenant contends that the Landlord removed his property from the rental unit without his consent and the Landlord contends that he helped the Tenant move his property, with the consent of the Tenant.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$665.00 for January of 2011 and \$825.00 per month for each subsequent month.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant was required to pay rent of \$1,490.00 for the period between January 06, 2011 and February 28, 2011 and that he only paid \$825.00 for this period. I therefore find that he still owes \$665.00 in rent for this period. As section 26(1) of the *Act* requires tenants to pay rent to their landlord, I find that the Tenant must pay \$665.00 to the Landlord for rent that is still outstanding from this period.

On the basis of the undisputed evidence presented at the hearing, I find the Tenant had only paid \$325.00 of the \$1,490.00 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. On the basis of the undisputed evidence presented at the hearing, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on February 18, 2011, pursuant to section 46 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 ended on February 18, 2011.

As the Tenant did not vacate the rental unit on February 18, 2011, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As he has already been ordered to pay rent for the period between February 18, 2011 and February 28, 2011, I find that the Landlord has been duly compensated for that period. I also find that the Tenant must compensate the Landlord for the four days in March that he remained in possession of the rental unit, at a daily rate of \$26.61, which equates to \$106.44.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when he did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit made it difficult, if not impossible for the Landlord to find new tenants for March 01, 2011 as the Tenant had not vacated the rental unit by that time. I therefore find that the Tenant must compensate the Landlord for the loss of revenue he experienced between March 05, 2011 and March 31, 2011, which was \$718.56.

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 find that the Landlord has established a monetary claim, in the amount of \$1,540.00, which is comprised of \$771.44 in unpaid rent, \$718.56 for loss of revenue from March of 2011, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,540.00. 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: March 15, 2011.

Residential Tenancy Branch