



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 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, 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.

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 an Order of Possession 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 this tenancy began on October 01, 2010, that the tenancy agreement required the Tenant to pay utilities and monthly rent of \$2,175.00, and that Tenant paid a security deposit of \$1,087.50.

The Landlord and the Tenant agree that the Tenant did not pay rent for February or March of 2011. The Landlord and the Tenant agree that the Tenant still owes the Landlord \$120.36 in utilities.

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 an effective date of February 25, 2011, on February 15, 2011.

Analysis

Based on 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 \$2,175.00 plus utilities and that the Tenant had not paid rent that was due on February 01, 2011. As the Tenant failed to pay rent that was due on February 01, 2011, I find that the Tenant must pay the Landlord \$2,175.00.

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 Tenant was personally served with a Notice to End Tenancy that required the Tenant to vacate the rental unit by February 25, 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 25, 2011. As the Tenant did not vacate by that date, I find the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on February 25 2011, I find that he is obligated to pay rent while he retains possession of the rental unit. As he has already been ordered to pay rent for the period between February 25, 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 month of March of 2011, as he remains in possession of the unit. I therefore find that the Tenant must also pay rent for March of 2011, in the amount of \$2,175.00.

As the Tenant agrees that he still owes \$120.36 in utilities, I find that he is obligated to pay this amount to the Landlord.

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.

I find that the Landlord is entitled to retain the Tenant's security deposit, in the amount of \$1,087.50, in partial satisfaction of the monetary claim.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, 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 \$4,520.36, which is comprised of \$4,350.00 in unpaid rent, \$120.36 in utilities, 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, in the amount of \$1,087.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,432.86. 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 24, 2011.

Residential Tenancy Branch