



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.

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 Matter

At the start of the hearing the application was amended to correct the female tenant's surname.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

Background and Evidence

This month – to - month tenancy commenced on December 1, 2010; rent was \$1,300.00 due on the first day of each month. The tenants were to pay utility costs.

The deposit paid was deducted from January, 2011, rent owed. A copy of the tenancy agreement and written agreement for use of the deposit was supplied as evidence.

The tenants confirmed receipt of a ten (10) day Notice to End Tenancy for non-payment of rent, given on March 6, 2011, which had an effective date of March 16, 2011; that was personally handed to the female tenant by the landlord.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,300.00 March rent owed plus \$100.00 in utilities within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The tenants did not dispute the Notice issued.

The tenants confirmed receipt of the gas utility bill submitted as evidence in which fees from January 27 to February 25, 2011, owed are \$200.45; the tenants owe \$100.00 of that bill. The tenants have not paid the landlord for the gas use.

The parties agreed that on March 11, 2011, the tenants made a \$500.00 rent payment to the landlord. A copy of a use and occupancy only receipt was issued and served to the tenants as part of the hearing package. The tenants stated that there was an agreement for work to be completed, in lieu of rent owed. The landlord confirmed that the male tenant had completed some work for him, for which the tenant had been compensated.

The landlord stated he is owed \$800.00 for march rent plus \$100.00 gas utility costs.

Analysis

I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on March 16, 2011, pursuant to section 46 of the Act.

There was no evidence before me of any employment agreement that formed a part of this tenancy, or any other written agreement allowing deductions from rent owed for work completed.

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 tenants disputed the Notice or paid the rent and utilities owed within 5 days of March 6, 2011; therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served.

In the absence of evidence to the contrary, I find that the tenants have not paid March, 2011, rent in the amount of \$800.00 plus gas utilities owed in the sum of \$100.00 from January 27 to February 25, 2011, inclusive and that the landlord is entitled to compensation totalling \$900.00.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, 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 \$950.00, which is comprised of \$800.00 march rent; \$100.00 gas utility costs 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 in the sum of \$950.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: April 01, 2011.

Residential Tenancy Branch