



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. The parties' antagonistic behaviour significantly disrupted an orderly conduct of the proceedings; however they were given a full opportunity to be heard and to make submissions.

At the outset, the tenant requested an adjournment because she did not receive the landlord's application for dispute resolution until April 7th, 2011. She stated that she needed more time to submit evidence by way of bank statements to show that she paid rent for March 2011.

Section 59(3) of the Act provides in part that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days. On that basis I find that the tenant had sufficient notice and her request for an adjournment is denied.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite in a single detached home. The landlord lives in the upper portion of the house. The tenancy started on December 1st, 2010. The monthly rent was \$700.00 and the tenant paid a security deposit of \$350.00.

The landlord testified that the tenant did not pay rent for March 2011 and that he served the tenant in person with a 10 Day Notice to End Tenancy on March 14th, 2011. He stated that the tenant had belongings in the unit and that she sub-let the suite to a friend. He said that he discussed the unpaid rent throughout the month of March and that he has been threatened. The landlord advanced a number of allegations and claims that are not subject to this application; therefore I will not consider that portion of the landlord's evidence. The landlord said that the tenants did not pay rent for April 2011 and made a claim for 2 months of unpaid rent totalling \$1400.00.

The tenant testified that she paid rent for March as she usual. She stated that the landlord refused to be paid by cheques and that she has always paid him cash in an envelope inserted in his mail slot. She stated that the landlord was not there to receive the rent for March and that she inserted the money in the mail slot on March 4th. She said that the landlord has never given her any receipts but that she has bank statements to support withdrawal of the rent money. She argued that the landlord served the Notice to End Tenancy to her boyfriend and not her. She said that the landlord made it impossible for the tenancy to continue and that she moved out on April 9th, 2011. She said that she did not pay rent for that month because she did not trust the landlord's claim when she did in fact pay rent for March.

Analysis

The party who makes the claim bears the burden to prove the grounds for his claim. There was no documentary evidence before me from the landlord to support his claims of unpaid rent such as receipts; that the tenant has not completely moved out; or that there is another tenant in the unit. Based on the parties' diametrically opposed testimony, and absent more objective, material evidence from the landlord I am not satisfied that the landlord proved, on the balance of probabilities, that the tenant did not pay rent for March 2011 and I dismiss this portion of his claim.

Nevertheless, Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*. Although the tenant was served with a Notice to End Tenancy, she did not file for dispute resolution as specified on the notice; she continued to occupy the unit until April 9th and on that basis I find that the landlord is entitled to that month's rent.

The landlord is not convinced that the tenant has completely moved out. On that basis I grant the landlord an order of possession to allow him to take possession of the unit.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. If necessary, This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$700.00. Since he was partially successful, I grant him partial recovery of the filing fee for a claim totalling \$725.00. I authorize the landlord to keep the tenant's security deposit and pursuant to Section 67 of the *Act*, I grant the landlord a monetary order for the balance of \$375.00.

This Order may be registered in the 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: April 12, 2011.

Residential Tenancy Branch