



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPC, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause, an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, 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.

The female Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail, at the rental unit, on March 22, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession, to a monetary Order for unpaid rent and/or loss of revenue, 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 female Agent for the Landlord stated that this tenancy began on September 01, 2010; that the Tenant was required to pay monthly rent of \$780.00 on the first day of each month; and that the Tenant paid a security deposit of \$390.00.

The female Agent for the Landlord stated that the Tenant still owes \$290.00 in rent from February of 2011, that he paid no rent for March of 2011, and that he paid no rent for April of 2011. The Landlord is seeking the unpaid rent from February and March and compensation for lost rental revenue from April of 2011.

The male Agent for the Landlord stated that he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of March 18, 2011, on March 08, 2011 at 1356 hours. The Notice declared that the Tenant owed \$1,070.00 in rent that was due on March 01, 2011.

At the hearing the female Agent for the Landlord withdrew the Landlord's application for an Order of Possession for Cause, once she was advised that the Landlord would be granted an Order of Possession for Unpaid Rent.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$780.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay \$290.00 in rent that was due on February 01, 2011 and \$780.00 in rent that was due on March 01, 2011. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,070.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant was personally served with a Notice to End Tenancy on March 08, 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 has ended on the effective date of the Notice, which was March 18, 2011. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served upon the Tenant.

As the Tenant did not vacate the rental unit on March 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 March 18, 2011 and March 31, 2011, I find that the Landlord has been duly compensated for that period.

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 April of 2011 as the Tenant still occupies the rental unit. I therefore find that the Tenant must compensate the Landlord for the loss of revenue experienced for April of 2011, in the amount of \$780.00.

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 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 \$1,900.00, which is comprised of \$1,070.00 in unpaid rent, \$780.00 in compensation for lost revenue, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit, in the amount of \$390.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,510.00. 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: April 08, 2011.

Residential Tenancy Branch