



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was not done in accordance with section 89 of the *Act*, as they were sent via registered mail on May 11, 2011 to the Tenant's former employer. The Tenant appeared and confirmed he received the documents and that he wanted to proceed with this hearing.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, Regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

Background and Evidence

The parties entered into a written fixed term tenancy agreement that began on February 07, 2011 and was set to switch to a month to month tenancy after February 29, 2012. Rent is payable on the first of each month in the amount of \$1,625.00 and on February 4, 2011 the Tenant paid \$812.50 as the security deposit.

The Landlords testified that when the Tenants failed to pay their March 1, 2011 rent a 10 Day Notice was issued and posted to their door on March 14, 2011. The rental unit

was checked on March 30, 2011 and was found to be abandoned with debris and old furniture left behind which is currently in storage.

The Landlords withdrew their request for an Order of Possession as they have regained possession and re-rented the unit as of April 1, 2011. They are seeking a monetary order for the unpaid rent of \$1,625.00 for March 2011.

The Tenant testified his roommate vacated the rental property without notice leaving him responsible for the rent. No rent was paid for March 2011 and the Tenant vacated the property sometime in early March 2011 leaving debris and discarded furniture. He does not want the discarded debris or furniture and has no means to pick it up. He does not have a current address however he is currently employment with the company name as listed on the front of this decision as the "in care of" (c/o) address.

Given the current Canada Post strike the Landlords requested their decision be faxed to them while the Tenant requested to pick up his decision at the Residential Tenancy Branch in Burnaby.

Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant Landlord pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenant.

Order of Possession. The Landlord withdrew their request for an Order of Possession.

A tenant is the person who has signed a tenancy agreement to rent residential premises. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$1,625.00 for March 1, 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

Based on the aforementioned I find the Landlord has met the burden of proof and I award the Landlord **\$1625.00** for unpaid rent.

Filing Fee. The Landlord has succeeded with their claim; therefore I hereby award recovery of the **\$50.00** filing fee from the Tenant.

Monetary Order – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Unpaid Rent for March 2011	\$1625.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,675.00
Less Security Deposit of \$812.50 plus interest of \$0.00	-812.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$862.50

Conclusion

The Landlord's decision will be accompanied by a Monetary Order for **\$862.50**. The order must be served on the Respondent Tenant and is enforceable through the Provincial Court 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: June 03, 2011.

Residential Tenancy Branch