



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL, MNSD, 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 Landlord's Use of Property, 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 for Landlord's Use of Property; to keep 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, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that the Tenants moved into this rental unit on May 10, 2010; that during the latter portion of the tenancy the Tenants were required to pay monthly rent of \$625.00 on the first day of each month; and that the Tenants paid a security deposit of \$275.

The Landlord and the Tenant agree that this tenancy was the subject of a previous dispute resolution proceeding and that on July 14, 2011 a dispute resolution officer determined that this tenancy ended on August 31, 2011. The parties agree that the rental unit has not yet been vacated and the Landlord is seeking an Order of Possession for the rental unit.

The Landlord and the Tenant agree that the Tenants have not paid rent for September of 2011. The Landlord would like to retain the security deposit in compensation for the days the Tenants remained in the rental unit.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenants entered into a tenancy agreement with the Landlord that required them to pay monthly rent of \$625.00 during the latter portion of the tenancy.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenants continue to live in the rental unit and that a dispute resolution officer previously determined that the tenancy ended on August 31, 2011.

As a dispute resolution officer has previously determined that this tenancy ends on August 31, 2011; there is no evidence before me that an Application to Review that decision has been filed by either party; and there is no evidence before me that either party has filed for a judicial review of that decision, I find that the tenancy ended on August 31, 2011 and the Landlord is entitled to an Order of Possession, pursuant to section 55(3) of the *Act*. 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 Tenants did not vacate the rental unit on August 31, 2011, I find that they must pay the equivalent of rent, on a per diem basis, for the days they remained in possession of the rental unit. I therefore find that the Tenants owe the Landlord for the 22 days in September that they remained in possession of the rental unit, at a daily rate of \$20.83, which equates to \$458.26.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenants' security deposit of \$275.00 in partial satisfaction of this monetary claim. I decline to award the Landlord a monetary Order for the remaining \$183.26 owed, as the Landlord did not make application for compensation in an amount that exceeds the security deposit.

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

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. 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 \$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 for the amount \$50.00. 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: September 22, 2011.

Residential Tenancy Branch