



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 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 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 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.

The Agent for the Landlord stated that on April 26, 2012 the Landlord posted the Application for Dispute Resolution and the Notice of Hearing to the door of the rental unit. The Tenant acknowledged receipt of these documents, although he cannot recall when they were located.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were not served to the Tenant. As they were not served to the Tenant they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that they have a written tenancy agreement that indicates the tenancy began on November 01, 2011 and that the Tenant is required to pay monthly rent of \$2,000.00 by the first day of each month. The parties agree that they verbally agreed to amend the start date of the tenancy to December 01, 2011 and to reduce the monthly rent to \$1,200.00, as the Tenant would only be occupying the upper portion of the residential complex.

The Tenant stated that he is currently a tenant in the rental unit. The Agent for the Landlord stated that they have been unable to locate the Tenant in the rental unit so they believe he has abandoned the rental unit.

The Landlord and the Tenant agree that the only rent the Tenant has paid is \$600.00 in December of 2011 and \$600.00 in January of 2012. The Tenant stated that he has not paid any additional rent because of a variety of perceived deficiencies with the rental unit, none of which constitute an emergency repair as defined by the *Act*. He acknowledged that he has never filed an Application for Dispute Resolution seeking a rent reduction and the Director has never been given him written authority to withhold any portion of the rent.

The Agent for the Landlord stated that the Landlord has been unable to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the parties have a tenancy agreement that requires the Tenant to pay monthly rent of \$1,200.00 by the first day of each month.

On the basis of the testimony of the Tenant and the fact that he has attended this hearing in response to the Landlord's claim, I find that the Tenant has not abandoned the rental unit.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant has failed to pay rent of \$6,000.00 for the period ending May 31, 2012. In the absence of evidence to show that the Tenant has a legal right to withhold rent, I find that the Tenant must pay the Landlord \$6,000.00 in unpaid rent.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act* by giving proper notice to end the tenancy. As I have no evidence that the Landlord served the Tenant with a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, I find that the Landlord has not yet ended the tenancy. I therefore dismiss the Landlord's application for an Order of Possession and I find that this tenancy will continue until it is ended in accordance with the *Act*.

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 find that the Landlord has established a monetary claim, in the amount of \$6,050.00, which is comprised of \$6,000.00 in unpaid rent 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 for the amount of \$6,050.00. 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: May 15, 2012.

Residential Tenancy Branch