



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application: OPR; MNR; MNSD; FF

Tenant's application: CNR; FF

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks an Order of Possession and Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks to cancel the Notice to End Tenancy for Unpaid Rent and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with his Notice of Hearing documents, by handing the documents to the Landlord on March 1, 2013.

The Tenant acknowledged receipt of the Landlord's Notice of Hearing documents and documentary evidence by registered mail, received on March 8, 2013,

The Tenant also acknowledged receipt of the Notice to End Tenancy for Unpaid Rent on February 24, 2013.

Issues to be Decided

- Is the Notice to End Tenancy issued February 24, 2013, (the "Notice") a valid document?
- Is the Landlord entitled to an Order of Possession and a monetary award?

Background and Evidence

The rental unit is the basement suite of a house. The Landlord occupies the upper suite. This tenancy began on January 1, 2013. Monthly rent is \$825.00, due the first

day of each month. The Tenant paid a security deposit in the amount of \$400.00 at the beginning of the tenancy.

The Tenant stated that his employer did not pay him his wages and therefore he was unable to pay full rent when it was due on February 1st and could only pay \$400.00. The Tenant stated that he has not paid any rent for March, 2013, either.

The Landlord provided a copy of the written agreement, dated February 3, 2013, with respect to payment of February's rent. The agreement indicates that the parties agreed that the balance owing for February's rent would be paid in full on February 16, 2013. Both parties signed the agreement. The Tenant stated that, although he acknowledged that he received a copy of the agreement with the Landlord's documentary evidence, he did not have the copy in front of him to refer to. He stated that he thought their agreement was that he would pay the balance of the rent for February after he got paid by his employer.

The Landlord requested an Order of Possession and a monetary order for unpaid rent for February and March, 2013.

Analysis

Based on the testimony and documentary evidence provided, I find that monthly rent is \$825.00, due on the first day of each month.

Section 26 of the Act requires tenants to pay rent when it is due, unless they have a right under the Act, regulation or tenancy agreement to deduct all or a portion of the rent. In this case, the Tenant had no such right to deduct a portion of rent. The Landlord agreed in writing to wait until February 16, 2013, for the balance of February's rent; however, the Tenant has still not paid the balance of rent for February, or any rent for March, 2013. Therefore, I find that the Notice is a valid notice and the Tenant's application to cancel it is dismissed.

The Tenant has not been successful in his application and I find that he is not entitled to recover the cost of the filing fee from the Landlord.

The parties agreed that the Notice was served on February 28, 2013. Therefore, I find that the tenancy ended on the effective vacancy date of the Notice, March 7, 2013. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

I find that the Landlord is entitled to a monetary award for unpaid rent for February and March, 2013, in the total amount of \$1,250.00. Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of her monetary award.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent	\$1,250.00
Recovery of filing fee	\$50.00
Less security deposit held by Landlord	<u>-\$400.00</u>
Total	\$900.00

Conclusion

The Tenant's application is **dismissed**.

I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$900.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: March 27, 2013

Residential Tenancy Branch

