



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

The 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 address noted on the Application, on August 22, 2008, but that it was not claimed by the Tenant. A tracking number was provided. The Canada Post website shows the mail was returned to the sender. These documents are deemed to 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 for unpaid rent; to a monetary Order for unpaid rent; 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 *Act*.

Background and Evidence

The tenancy agreement requires the Tenant to pay monthly rent of \$285.00. The Agent for the Landlord stated that the Tenant paid a security deposit of \$185.00 on December 03, 1999; \$20.00 on April 28, 2006 and \$20.00 on June 05, 2006.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of July 07, 2008, was personally served on the Tenant's daughter on June 27, 2008. The Agent stated that the daughter was living with the Tenant at the time the Notice was served, and is over the age of nineteen. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$580.00 within five days after the Tenant is assumed to have received the Notice. The Notice also indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set

out in the Notice unless the Tenant files an Application for Dispute Resolution within five days.

The Agent for the Landlord stated that she is not certain if the Tenant has vacated the rental unit, as there is still furniture in the rental unit.

The Agent for the Landlord stated that the Tenant still owes \$10.00 in rent from May of 2008; \$285.00 in rent from June of 2008; \$285.00 from July of 2008; and \$285.00 from August of 2008.

Analysis

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 this basis I will grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$865.00.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$241.92, in partial satisfaction of the monetary claim.

Conclusion

The Landlord has been granted 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 \$915.00, which is comprised on \$865.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$241.92, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$673.08. 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.

Date of Decision: September 16, 2008
