



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#2 stated that she posted copies of the Application for Dispute Resolution and Notice of Hearing on the front door of the rental unit on August 18, 2008. These documents are deemed to have been served in accordance with section 89 of the *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 *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord#1 stated that the tenancy agreement requires the Tenant to pay monthly rent of \$850.00, and that the Tenant paid a security deposit of \$100.00 on January 22, 2007.

The Agent for the Landlord#1 stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of July 20, 2008, was personally served on the Tenant on July 10, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$3,020.00 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.

Evidence submitted by the Landlord shows that the Tenant owed \$3,020.00 in unpaid rent and late fees when the Notice to End Tenancy was served on July 10, 2008. The

evidence shows that the Tenant paid \$450.00 on July 15, 2008 and \$2,000.00 on July 26, 2008 towards this debt, leaving an outstanding debt of \$570.00.

The Agent for the Landlord#1 stated that the Tenant subsequently did not pay his August rent or his September when it was due, and he incurred additional late payment fees of \$20.00 in August of 2008, bringing his total debt to \$2,290.00.

The Agent for the Landlord#1 stated that the Tenant paid \$1,900.00 on September 03, 2008 toward his debt, leaving unpaid rent from September in the amount of \$390.00. The Agent for the Landlord #1 stated that he has an agreement with the Tenant that his tenancy will continue providing the tenant pays the outstanding rent for September on or before September 20, 2008.

The Agent for the Landlord requested an Order of Possession for September 30, 2008, which is enforceable if the Tenant fails to pay his rent for September, in full, by September 20, 2008.

Analysis

I find that the Landlord ended the tenancy on July 20, 2008 when the Tenant was served with a Notice to End Tenancy pursuant to section 46 of the *Act*. I find, however, that the Landlord reinstated the tenancy when he accepted a rent payment for July and August of 2008. I also find that accepting a partial payment for rent for September of 2008, combined with an agreement to continue the tenancy if the rent is paid in full by September 20, 2008, is further evidence that the tenancy was reinstated.

As I have found that the tenancy was reinstated after the Notice to End Tenancy became effective, I dismiss the Landlord's application for an Order of Possession based on that Notice to End tenancy. The Landlord retains the right to serve a new Notice to End Tenancy for any amount of rent that is due and has not been paid.

As the tenancy has not ended, I dismiss the Landlord's application to retain the Tenant's security deposit.

In the absence of evidence to the contrary, I find that the Tenant still owes rent from September, in the amount of \$390.00.

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.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$440.00, which is comprised on \$390.00 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 \$440.00. 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.

Date of Decision: September 09, 2008
