



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

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make 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 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 and the Tenant agree that the Tenant is required to pay monthly rent of \$750.00 plus \$20.00 per parking, and that the Tenant paid a security deposit of \$375.00 on June 01, 2008. The parties agree that they have a written tenancy agreement, however the Tenant stated that he did sign anything that authorizes the Landlord to collect a fee if the rent is not paid on time. The Landlord did not submit a copy of the tenancy agreement. The Agent for the Landlord stated that he believes there is a line that authorizes the Landlord to collect a fee for paying the rent late, but he is not certain of it.

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 August 23, 2008, was posted on the front door of the rental unit on August 13, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$795.00 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 and the Tenant agree that the Tenant still owes \$50.00 in rent/parking fees from July of 2008, \$770.00 in rent/parking fees from August of 2008. and \$770.00 in rent/parking fees from September of 2008.

The Landlord is claiming compensation, at a rate of \$25.00 per month, for the Tenant paying his rent late in July, August and September of 2008.

Analysis

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on August 16, 2008.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to have received this Notice on August 16, 2008, I find that the earliest effective date of the Notice is August 26, 2008.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was August 26, 2008.

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 find that this tenancy will end on September 30, 2008.

I find that the Tenant has not paid rent/parking fees in the amount of \$1,590.00.

I find that there is insufficient evidence to establish that the Tenant agreed to a fee for a late payment of rent, as is required by section 7 of the *Residential Tenancy Regulation*. As the Landlord has not established that the Tenant agreed to pay a fee for late payment of rent, I am dismissing the Landlord's request for late payment fees.

I find that the Landlord's 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 \$376.75, in partial satisfaction of the monetary claim.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on September 30, 2008. 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 \$1,640.00, which is comprised on \$1,590.00 in unpaid rent/parking fees 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 \$376.75, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,602.25. 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 22, 2008
