



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 tenancy agreement requires the Tenant to pay monthly rent of \$1,300.00. The Tenant paid a security deposit of \$650.00 on June 25, 2007.

The Agent for the Landlord stated that there is an addendum to their written tenancy agreement, which was not submitted in evidence, that requires the Tenant to pay a late fee of \$75.00 whenever he is late paying rent. The Tenant recalls agreeing to paying a fee whenever his is late paying rent.

The Agent for the Landlord and the Tenant agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 24, 2008, was posted on the front door of the rental unit on August 14, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$3,375.00 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 Tenant stated that he is vacating the rental unit and indicated he would have his property moved out of the rental unit by September 24, 2008.

The Agent for the Landlord and the Tenant agree that the Tenant still owes \$350.00 in rent from June of 2008, \$1,300.00 in rent from July of 2008, \$1,300.00 in rent from August of 2008. The Agent for the Landlord also requested compensation for the days in September that the rental unit was occupied by the Tenant.

The Agent for the Landlord is claiming late fees, in the amount of \$25.00, for the months of June, July and August, due to the fact that the rent was not paid on time.

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 17, 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 17, 2008, I find that the earliest effective date of the Notice is August 27, 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 27, 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 will grant the Landlord an Order of Possession that is effective on September 24, 2008.

I find that the Tenant must pay outstanding rent in the amount of 2,950.00 from June, July and August of 2008. I also find that the Tenant must pay rent, in the amount of \$1,039.92, for the 24 days he occupied the rental unit in September, which was calculated at a rate of \$43.33 per day.

Section 7(1)(d) of the *Regulation* stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the *Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

The tenancy agreement provides for a \$75.00 late fee, which is not authorized by the Regulation. I find that condition of the tenancy agreement regarding late fees does not comply with the legislation, and therefore I dismiss the Landlord's application for a monetary Order for late payment of fees. To be enforceable, the tenancy agreement must stipulate that the Tenant agrees to a late payment fee of \$25.00.

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 \$662.20, in partial satisfaction of the monetary claim.

Conclusion

The Landlord has been granted an Order of Possession that is effective on September 24, 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 \$4,039.92, which is comprised on \$3,989.92 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 \$3,377.72, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,377.72. 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
