



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 Landlord and the Tenant agree that the Tenant is required to pay monthly rent of \$1,700.00 and that the Tenant paid a security deposit of \$850.00 on May 11, 2008.

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 18, 2008, was posted on the front door of the rental unit on September 12, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$1,725.00 within five days after the Tenant is assumed to have received the Notice.

The Agent for the Landlord stated that the Tenant paid the outstanding rent on September 18, 2008. The Tenant stated that he paid his outstanding rent on September 16, 2008.

The Landlord and the Tenant agree that the Tenant has not paid rent for October 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 September 15, 2008. As the Tenant is deemed to have received the Notice to End Tenancy on September 15, 2008, I find that he had until September 20, 2008 to pay his outstanding rent.

The Landlord and the Tenant agree that the Tenant paid the outstanding rent prior to September 20, 2008. On this basis I find that the Notice to End Tenancy has no effect, pursuant to section 46(4)(a) of the *Act*. I therefore advised the Landlord that I would not be granting her an Order of Possession on the basis of the Notice to End Tenancy.

During the hearing the Agent for the Landlord and the Tenant stated that they wished to mutually end this tenancy on October 31, 2008.

I find that the Landlord's application is without merit, as the Tenant had paid the outstanding rent prior to the Landlord filing the Application for Dispute Resolution on September 18, 2008. I therefore find that the Landlord is not entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

On the basis of the settlement reached by the two parties I am issuing an Order of Possession to the Landlord that is effective at 1:00 p.m. on October 31, 2008. This Order may be served upon the Tenant; filed with the Supreme Court of British Columbia; and enforced as an Order of that Court.

On the basis of the agreement reached by the two parties I will also be issuing a monetary Order in the amount of \$1,700.00, as compensation for October rent that is due to the Landlord. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Both parties should be that section 38(3) authorizes landlords to retain all or part of the Tenant's security deposit if that amount of the monetary Order is not paid before the end of the tenancy.

Date of Decision: October 16, 2008

