



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC MNR OPR FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

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 relevant oral evidence, to ask relevant questions, and to make relevant 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 a monetary Order for loss of revenue from February of 2009; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 01, 2008, and that the Tenant is required to pay monthly rent of \$985.00 on the first day of each month.

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 January 12, 2009 was personally served on the Tenant on January 02, 2009. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$985.00 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 Landlord and the Tenant agree that the Tenant still owes \$985.00 in rent from January of 2009.

The Landlord is also seeking compensation for loss of revenue from February of 2009, as he is uncertain that the Tenant will vacate the rental unit as required or that she will leave the rental unit in rentable condition at the end of the tenancy.

Analysis

The evidence shows that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on January 12, 2009, pursuant to section 46 of the *Act*.

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 January 31, 2009.

The evidence shows that the Tenant did not pay rent in the amount of \$985.00 for January of 2009, and that the Landlord is entitled to compensation in that amount.

I find that the Landlord's application for loss of revenue for February of 2009 is premature. I hereby dismiss the Landlord's application for loss of revenue from February, with leave to reapply. The Landlord retains the right to apply for compensation for loss of revenue from February if the Tenant does not vacate the rental unit at the end of January or if she does not leave the rental unit in rentable condition.

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.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on January 31, 2009. 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 \$1,035.00, for the filing fee paid by the Landlord for this Application for which is comprised on

\$985.00 in unpaid rent and \$50.00 in compensation Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$1.035.00. 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.

Dated: January 20, 2009