



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

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, to retain all or part of the security deposit and pet damage deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on January 19, 2009. A Canada Post receipt with tracking number was submitted in evidence. The Canada Post website shows the mail was returned to the sender on February 17, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (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 pet damage 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 *Act*.

Background and Evidence

The Landlord stated that this tenancy began on November 01, 2008; that the Tenant is required to pay monthly rent of \$1,300.00; that the Tenant paid a security deposit of \$750.00 on November 01, 2008; and that the Tenant paid a pet deposit of \$750.00 on November 01, 2008.

The Landlord stated that he personally served the Tenant with a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 21, 2009, on January 21, 2009. The Notice 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 pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Landlord stated that the Tenant advised him on January 26, 2009 that she would be vacating the rental unit but that a friend of hers would be willing to continue the tenancy. He stated that the Tenant paid her outstanding rent for January and the rent that was due for February on January 26, 2009. He stated that the Tenant told him he could apply her pet damage deposit and security deposit to the new tenancy.

The Landlord stated that he told the Tenant that he would allow her friend to continue the tenancy if she provided him with identification for the new occupant. He stated that she has not provided him with identification for the new occupant; she has not yet provided him with a forwarding address; and he does not know if the new occupant will be paying the rent for March of 2009. The Landlord stated that he understood that the Tenant did not intend to continue the tenancy.

Analysis

In the absence of evidence to the contrary, I find that the Landlord and the Tenant have a tenancy agreement that requires the Tenant to pay monthly rent of \$1,300.00; that the Landlord personally served the Tenant with a Ten Day Notice to End Tenancy on January 10, 2009; that he accepted a rent payment from the Tenant for January and February of 2009 on January 26, 2009; and that both parties understood that their tenancy agreement was ending on February 28, 2009.

On this basis, I grant the Landlord an Order of Possession that is effective on February 28, 2009.

The evidence shows that the rent is not in arrears. On this basis, I dismiss the Landlord's application for a monetary Order for unpaid rent.

I find that the Landlord's application has some merit and that he 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 February 28, 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 \$50.00 as compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I hereby authorize the Landlord to retain \$50.00 from the Tenant's security deposit.

As the Tenant has not provided the Landlord with permission in writing to retain any portion of those deposits, as is required by section 38(4) of the *Act*, I am unable to authorize the Landlord to retain the remaining portion of the security deposit or pet damage deposit. I find that the Landlord must retain or return these deposits in accordance with sections 38 and 39 of the *Act* once the tenancy ends. For the benefit of both parties, sections 38 and 39 of the *Act* read:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
- (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition]*

report requirements] or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished

The Landlord and the Tenant's friend retain the right to establish a new tenancy agreement.

Date of Decision: February 25, 2009
