



Dispute Resolution Services

Residential Tenancy Branch
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 to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. Both parties were represented 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 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 \$1,050.00; and that the Tenant paid a security deposit of \$425.00 on April 22, 2005.

The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 15, 2009, was personally served on the Tenant on January 05, 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 and the Tenant agree that the Tenant paid his outstanding rent for January on February 13, 2009. The parties agree that the Tenant still owes rent from February and March of 2009.

Analysis

The evidence shows that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit, 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, the evidence shows that the Tenant exercised neither 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.

I find that the Tenant owes \$1,050.00 in rent for February of 2009. The Landlord has requested an Order of Possession that is effective on March 15, 2009. I therefore find that the Landlord is also entitled to rent for fifteen days in March, at a rate of \$33.87 per day, for a total of \$508.05.

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 \$440.05, 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 March 15, 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 \$1,608.05, which is comprised on \$1,558.05 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 \$440.05, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,168.00. 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.

Date of Decision: March 02, 2009
