



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications between the parties.

The Landlord filed an 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, 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.

The Tenant filed an Application for Dispute Resolution, in which she applied to set aside a Notice to End Tenancy for Unpaid Rent, for a monetary Order for the cost of emergency repairs, for a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. At the outset of this hearing, the Tenant withdrew her Application for Dispute Resolution, and stated that she plans to pursue these claims at a later date.

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.

The Tenant stated that the only documents that were served to her by the Landlord prior to this hearing were the Application for Dispute Resolution, the Notice of Hearing, and a fact sheet from the Residential Tenancy Branch. The Resident Caretaker stated that when she served the Tenant with those documents, she also served her with a copy of the tenancy agreement; a copy of the Notice to End Tenancy; and a copy of a Returned Cheque Notice. I find that I was able to render a decision in this matter without referring to the tenancy agreement; the Notice to End Tenancy; or the Returned Cheque Notice, therefore service of these documents is a moot point.

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, for paying rent late, and for a

cheque that was returned due to insufficient funds; 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 Agent for the Landlord and the Tenant agree that this tenancy began in 2006; that the Tenant is currently required to pay monthly rent of \$881.00; and that the Tenant paid a security deposit of \$425.00 on October 02, 2006.

The Resident Caretaker stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 16, 2009, was placed in the Tenant's mail slot on January 06, 2009. The Tenant stated that she did not receive the Notice to End Tenancy that is the subject of this dispute until sometime in February of 2009.

At the hearing the Agent for the Landlord and the Tenant mutually agreed to end this tenancy on March 15, 2009.

The Agent for the Landlord and the Tenant agree that the Tenant has not paid rent for December of 2008, January of 2009, February of 2009 or March of 2009. The Agent for the Landlord and the Tenant agreed that the Tenant is only required to pay rent until March 15, 2009, due to their mutual agreement to end the tenancy on that date.

The Resident Caretaker stated that section 10 of the tenancy agreement that was signed by the Tenant authorizes the Landlord to charge the Tenant \$25.00 whenever she is late paying her rent or whenever she tenders a cheque that is returned due to insufficient funds. Although the Tenant did not have a copy of the tenancy agreement with her, she stated that she believes she agreed to those fees.

The Resident Caretaker and the Landlord agree that the cheque the Tenant tendered for rent for December of 2008 was returned due to insufficient funds. The Landlord is seeking compensation, in the amount of \$25.00, for that NSF cheque. The Landlord is also seeking compensation, in the amount of \$25.00 per month, as the Tenant did not pay her rent on time in December, January, February and March.

Analysis

As the parties mutually agreed to end the tenancy on March 15, 2009, I will grant the Landlord an Order of Possession that is effective at 1:00 p.m. on that date.

As the parties mutually agreed that the Tenant owes rent in the amount of \$3,083.50 for outstanding rent unit March 15, 2009, I find that the Tenant owes the Landlord that amount.

The evidence shows that the Tenant did agree to pay a late payment fee whenever she is late paying rent. I therefore find that the Tenant owes the Landlord \$100.00 for not paying her rent on time in December of 2008, January of 2009, February of 2009, and March of 2009.

The evidence shows that the Tenant did agree to pay an NSF fee whenever she tenders a cheque that is returned due to insufficient funds. I therefore find that the Tenant owes the Landlord \$25.00 for the December rent cheque that was returned due to insufficient funds.

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.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$438.41, 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 \$3,258.50, which is comprised on \$3,083.50 in unpaid rent, \$100.00 in late fees, \$25.00 in NSF fees, 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 \$438.41, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,820.09. 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 5, 2009.
