



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

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, 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; and to compensation 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 Agent for the Landlord and the Tenant agree stated that this tenancy began approximately three years ago and that the Tenant is required to pay monthly rent of \$1,850.00.

The Agent for 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 19, 2009 was personally served on the Tenant on January 19, 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 Tenant stated that he did not pay any of the outstanding rent after receiving the Notice to End Tenancy, and he did not file an Application for Dispute Resolution.

The Agent for the Landlord stated that the Tenant still owes \$1,850.00 in rent for August of 2008; \$1,850.00 in rent for September of 2008; \$1,850.00 in rent for October of 2008; \$1,850.00 in rent for November of 2008; \$1,850.00 in rent for December of 2008; \$1,850.00 in rent for January of 2009; \$1,850.00 in rent for February of 2009; and \$1,850.00 in rent for March of 2009.

The Tenant agrees that he owes rent for August of 2008, September of 2008, October of 2008, January of 2009, February of 2009, and March of 2009. He stated that he gave the Landlord a bank draft, in the amount of \$1,850.00, on November 05, 2008 or November 07, 2008, which represented the rent payment for November. He stated that he gave the Landlord a bank draft, in the amount of \$1,850.00, on December 22, 2008, which represented the rent payment for December. He submitted no documentary evidence to corroborate that he paid his rent for November and December.

The Landlord submitted a letter that they sent to the Tenant, dated January 11, 2009, in which they advise that the Tenant had not paid rent for March of 2007, July of 2008, September of 2008, October of 2008, and January of 2009. This letter does not state that the Tenant owes rent for November or December of 2008.

The Landlord submitted cheques dated October 05, 2006, February 07, 2008, July 08, 2008, August 05, 2008, and October 05, 2008 were returned due to insufficient funds. The Landlord also submitted documentary evidence to show that a cheque was returned due to insufficient funds in September of 2008.

Analysis

The evidence shows that the Tenant received a 10 Day Notice to End Tenancy on January 19, 2009. Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. I find that the earliest effective date of the Notice is January 29, 2009.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was January 29, 2009.

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. The evidence shows that the Tenant did not exercise 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 two days after it is served upon the Tenant.

As the parties agree that rent was not paid for August of 2008, September of 2008, October of 2008, January of 2009, February of 2009, and March of 2009, I find that the Tenant owes \$11,100.00 in rent for these months.

After hearing the contradictory evidence regarding rent for November and December of 2008, I find that the Landlord has submitted insufficient evidence to establish that the Tenant has not paid rent for November and December. I therefore dismiss the Landlord's application for compensation for rent for November and December of 2008. In reaching this conclusion, I was strongly influenced by the letter written to the Tenant by the Landlords, dated January 11, 2009, in which the Landlords detail the outstanding rent, but do not mention that rent is due for November and December. I was also influenced by the absence of a ledger, or similar documentary evidence, that helps to establish that rent is due for those months.

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 two days after it is served upon the Tenant. 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 \$11,150.00, which is comprised on \$11,100.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$11,150.00. 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 10, 2009
