



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. 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 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 agreed that this tenancy began on February 01, 2002; that the Tenant is required to pay monthly rent of \$689.00; and that the Tenant paid a security deposit of \$297.50 on January 21, 2002.

The Agent for the Landlord and the Tenant agreed that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of February 12, 2009, was personally served on the Tenant on February 02, 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 Agent for the Landlord and the Tenant agreed that the Tenant paid \$600.00 in rent on February 20, 2009 and \$115.00 on February 27, 2009, leaving a credit of \$12.00 toward rent for March of 2009. The parties agreed that they would consider continuing with the tenancy if the Tenant paid rent when it was due on March 01, 2009, however the Tenant did not pay the outstanding rent of \$677.00.

The Agent for the Landlord stated that the Tenant also owes a late fee of \$25.00 for paying his rent late in March. The Landlord submitted a copy of the tenancy agreement in which the Tenant agreed to pay a late fee of \$20.00 whenever he is late paying rent.

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 February 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. 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 on March 31, 2008.

The evidence shows that the Tenant still owes \$677.00 in rent for March of 2009. As the Tenant will be occupying the rental unit until the end of March, I find that he must pay this outstanding rent to the Landlord.

Section 7(1)(d) of the Regulation stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the Regulation stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee. The tenancy agreement submitted by the Landlord provides for a \$20.00 late fee. As the Tenant has only agreed to pay a late fee of \$20.00 fee, I dismiss the Landlord's claim for a fee of \$25.00, as the Tenant did not agree to that fee.

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 \$308.03, 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 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 \$727.00, which is comprised on \$677.00 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 \$308.03, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$418.97. 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 12, 2009.
