



Dispute Resolution Services

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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.

The Building Manager stated that she personally served the Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on February 27, 2009. In the absence of evidence to the contrary, I accept that these documents were served in accordance with section 89 of the *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 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 stated that this tenancy began on November 10, 2008; that the Tenant is required to pay monthly rent of \$1,250.00; that the Tenant is required to pay his own hydro costs; and that the Tenant paid a security deposit of \$625.00 on November 08, 2008.

The Building Manager stated that she personally served the Tenant with a Ten Day Notice to End Tenancy for non-payment of rent, which had an effective date of February 12, 2009, 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 unit 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 stated that the Tenant paid \$1,250.00 for rent from February on March 12, 2009. The Agent for the Landlord stated that the Tenant also paid \$1,250.00 for rent from March on March 12, 2009. He stated that the Tenant was given a receipt for the two rent payments, which indicated that the payments were being accepted for "use and occupancy only".

The Agent for the Landlord stated that the Tenant has not paid rent for April of 2009, and that the Landlord wishes to end the tenancy.

The Agent for the Landlord stated that the Tenant also owes three late fees of \$25.00 for paying his rent late in February, March, and April. The Landlord did not provide a copy of the tenancy agreement to show that the Tenant agreed to pay a late fee of whenever he is late paying his rent.

The Agent for the Landlord stated that the Tenant did not put the hydro into his name until a few weeks after the tenancy began, which resulted in the Landlord being charged \$6.79 in hydro for that period. The Landlord did not submit any documentary evidence to show that they were charged \$6.79 for hydro for a portion of this tenancy.

Analysis

In the absence of evidence to the contrary, I find 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 26(1) of the *Act* requires tenants to pay rent to their landlord. If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

Section 46(4) 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 to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised 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 April 30, 2009.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$1,250 for April of 2009. I find that the Landlord is entitled to rent for April of 2009, as the Tenant will be occupying the rental unit until the end of April.



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No documentary evidence was submitted to show that the Tenant agreed, in writing, to a fee for late payment of rent, as is required by section 7 of the *Residential Tenancy Regulation*. As the Landlord has not established that the Tenant agreed to pay a fee for late payment of rent, I am dismissing the Landlord's request for late payment fees.

I find that the Landlord has submitted insufficient evidence to show that the Tenant owes \$6.79 in hydro to the Landlord, and I therefore dismiss the Landlord's application for compensation for those costs. In reaching this conclusion, I was strongly influenced by the lack of receipts or other documentary evidence that establishes that the Landlord paid hydro charges on behalf of the Tenant.

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 \$626.38, 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 April 30, 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 \$1,300.00, which is comprised on \$1,250.00 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 \$626.38, in partial satisfaction of the monetary claim. Based on these determinations I grant the Landlord a monetary Order for the balance of \$673.62. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 20, 2009.

Dispute Resolution Officer