



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, 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. The Application for Dispute Resolution was amended to show the correct spelling of the Tenant's name, as provided by the Tenant at the hearing.

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 recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began in October of 2008; that there is no written tenancy agreement; and that the Tenant is required to pay monthly rent of \$750.00.

The Agent for the Landlord stated that he personally served a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of March 08, 2009, to the Tenant's sister on February 23, 2009. He stated that the female identified herself as the Tenant's sister (Loretta) and that he believed the sister was residing with the Tenant at the time the Notice was served upon her.

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The Agent for the Landlord called his father (Joginder) as a witness. The Witness for the Landlord stated that he recalls driving his son to the rental unit on February 23, 2009, at which time he observed the Agent for the Landlord serve the Notice to End Tenancy on an unknown female.

The Tenant stated that she did not receive the Notice to End Tenancy that was dated February 23, 2009. The Tenant called her sister (Loretta) as a witness. The Witness for the Tenant #1 stated that she was never personally served with a Notice to End Tenancy dated February 23, 2009, nor has she seen a Notice to End Tenancy with that date. The Witness for the Tenant #1 stated that she did see a Notice to End Tenancy that was dated March 02, 2009 or March 03, 2009, a copy of which has not been submitted in evidence.

The Agent for the Landlord and the Tenant mutually agreed to end this tenancy on May 15, 2009, regardless of any notices to end tenancy that have been served in relation to this tenancy. This mutually agreed upon date provides the Landlord with the certainty that the tenancy is ending and it provides the Tenant with time to locate a new residence. The Tenant agreed that she would pay \$375.00 in rent for the period between May 01, 2009 and May 15, 2009.

The Agent for the Landlord stated that the Tenant paid \$600.00 in rent on November 05, 2009 for November's rent, and that \$150.00 in rent for that month is still outstanding. The Tenant stated that she paid \$750.00 in cash for her rent for November. She stated that she asked for a receipt but never received one. The Agent for the Landlord stated that the Landlord did prepare a receipt for the rent that was paid for this month; the Tenant was advised that she could pick it up from the Landlord; but the Tenant never picked up the receipt. A copy of the receipt was not submitted in evidence.

The Agent for the Landlord and the Landlord agree that \$750.00 in cash was paid for rent for December. The Agent for the Landlord stated that the Landlord did prepare a receipt for the rent that was paid for this month; the Tenant was advised that she could pick it up from the Landlord; but the Tenant never picked up the receipt. A copy of the receipt was not submitted in evidence.

The Agent for the Landlord stated that the Tenant paid \$500.00 in rent on February 02, 2009 for rent for January, and that \$250.00 in rent for that month is still outstanding. The Tenant stated that she paid \$750.00 in cash for her rent for January on January 03, 2009. She stated that she asked for a receipt but never received one. The Agent for the Landlord stated that the Landlord gave the Tenant a receipt for the rent that was paid for this month. A copy of the receipt was not submitted in evidence.

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The Agent for the Landlord stated that the Tenant has paid no rent for February, March, or April of 2009. The Tenant stated that she paid all of her rent, in cash for those months, although she was never provided with receipts. She stated that she paid her February rent on February 02, 2009. She stated that she paid her rent for March and April on March 20, 2009.

The Witness for the Tenant #2 stated that she resided in this rental unit between May 01, 2008 and October 31, 2008. She stated that she always paid her rent by cheque and that she never received a receipt for the rent she paid. I note that the *Residential Tenancy Act (Act)* does not require landlords to provide a rent receipt when payments are made by cheque.

The Landlord is seeking compensation, in the amount of \$25.00 per month, for late fees from November, January, February, and March.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord, and that the Tenant is currently required to pay monthly rent of \$750.00.

Based on the mutual agreement to end this tenancy on May 15, 2009, I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on May 15, 2009.

There is a general legal principle that requires the places the burden of proving that damage or loss occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In relation to the claim for unpaid rent, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the Tenant has not paid all of the rent that is due in relation to this tenancy.

In reaching this conclusion, I was strongly influenced by the absence of evidence that establishes receipts were prepared and/or given to the Tenant. Although the Agent for the Landlord stated that receipts were available to be picked up by the Tenant, they were not submitted in evidence.

Section 26 of the *Residential Tenancy Act (Act)* stipulates that landlords must provide tenants with receipts whenever rent is paid in cash. The purpose of providing a tenant with a receipt is so that the tenant can prove a payment is made. Alternatively, the absence of a receipt can help establish that payments have not been made IF the landlord has established a history of providing receipts when payment has been made. In these circumstances, the Landlord has not established that he provided the Tenant

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with a receipt when she paid any portion of her rent, therefore I cannot, with any confidence, determine the amount of rent that was paid.

As the Landlord has submitted insufficient evidence to establish that rent was outstanding, I dismiss the Landlord's application for compensation for unpaid rent between November 01, 2008 and April 30, 2009.

Section 7 of the *Residential Tenancy Regulation* stipulates that a landlord can only collect a fee for paying the rent late if the tenancy agreement provides for the fee. As these parties do not have a written tenancy agreement, I find that the Landlord does not have the authority to collect a late fee. On this basis, I am dismissing the Landlord's request for late payment fees.

I find that the Landlord has failed to demonstrate that his application has merit, and I dismiss the Landlord's application to recover the filing fee for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on May 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.

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

Dated: April 28, 2009.

Dispute Resolution Officer