



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNC, OLC, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord submitted 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, to retain all or part of the security deposit, and to recover the fee from the Tenant for filing this Application for Dispute Resolution.

The Tenant submitted an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, and to recover the fee from the Landlord for filing 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 in relation to the Landlord's Application for Dispute Resolution 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 *Act*.

The issue to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Notice to End Tenancy for Cause should be set aside, whether I should issue an Order requiring the Landlord to comply with the *Act*, and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution, pursuant to sections 62, 67, and 72 of the *Act*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on April 02, 2007; that the Tenant is currently required to pay monthly rent of \$1,080.00 on the first day of each month; and that the Tenant paid a security deposit of \$515.00 on March 09, 2007.

The Agent for the Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of April 16, 2009, was posted on the front door of the rental unit on April 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 Tenant acknowledged that he did not dispute the Ten Day Notice to End Tenancy for Unpaid Rent and that he did not pay the rent that was due on April 01, 2009, as his roommate did not provide him with his share of the rent.

The Property Manager and the Tenant agree that the Tenant did not pay rent for April or May of 2009.

The Property Manager stated that the Tenant also owes a late fee of \$25.00 for paying rent late in April and May of 2009. The Landlord submitted a copy of the tenancy agreement, in which the Tenant agreed to pay a late fee of \$25.00 whenever he is late paying rent.

Once the Property Manager was advised that the tenancy would be ending on the basis of the 10 Day Notice to End Tenancy for Unpaid Rent, he elected to withdraw the One Month Notice to End Tenancy for Cause that was served on March 13, 2009.

At the hearing the Property Manager stated that the Landlord has not entered the rental unit in contravention of the *Act* and that they will not enter the rental unit unless they provide proper notice as required by section 29 of the *Act*.

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 \$1,080.00 on the first day of each month.

There is no dispute that the Tenant was served with a Ten Day Notice to End Tenancy For Unpaid Rent that required the Tenant to vacate the rental unit on April 16, 2009, 2008, 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 May 31, 2009.

The Tenant does not dispute that he has not paid rent for April or May of 2009, as required by section 26(1) of the *Act*. As the Tenant occupied the rental unit in April of 2009, I find that he owes rent, in the amount of \$1,080.00, for that month. As the Tenant will be occupying the rental unit until May 31, 2009, I find that he owes rent, in the amount of \$1,080.00, for that month.

I find that the Tenant signed a tenancy agreement in which he agreed to pay a fee of \$25.00 whenever he is late paying his rent, as is required by section 7 of the Residential Tenancy Regulation. I find that the Landlord is entitled to a late fee of \$25.00 for paying his rent late in April of 2009 and \$25.00 for paying his rent late in May of 2009.

As the Landlord has withdrawn the One Month Notice to End Tenancy for Cause, I find there is no need to set aside that Notice. On that basis, I find there is no reason to consider the Tenant's application to set aside the Notice.

I hereby Order that the Landlord comply with section 29 of the *Act* whenever entry to the rental unit is required. For the benefit of both parties, section 29 of the *Act* reads:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

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- (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I decline to award either party compensation for filing an Application for Dispute Resolution.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on May 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 \$2,210.00, which is comprised on \$2,160.00 in unpaid rent and \$50.00 in late fees. I hereby authorize the Landlord to retain the Tenant's security deposit plus interest, in the amount of \$529.13, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,680.87. 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 *Residential Tenancy Act*.

Dated: May 12, 2009.

Dispute Resolution Officer