



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary claim related to non-payment of rent by the tenant. The landlord submitted documented evidence showing that the tenant was served with notice of this hearing and application by registered mail on March 18, 2009. Pursuant to section 90(a) of the *Act* I deem the tenant was served on the fifth day after the register mail package was sent. I proceeded with the hearing in the tenant's absence.

I have amended the landlord's application to include the request to retain the tenant's security deposit plus interest in partial satisfaction of this claim. The tenant has abandoned the rental unit and failed to provide a forwarding address. If the landlord is successful in establishing damages related to non-payment of rent I find it is not prejudicial to the tenant to amend this application to allow the landlord to retain the security deposit plus interest.

Issues to be Determined

Has the tenant breached the tenancy agreement and *Act* by failing to pay rent? Has the landlord established a monetary claim for the sum of \$5,532.00 due to non-payment of rent?

Background and Evidence

The parties entered into a written tenancy agreement on October 16, 2008 for a fixed term tenancy beginning on November 1, 2008 and ending on April 30, 2009. The monthly rent was \$3,000.00 and a security deposit of \$1,500.00 was paid on October 15, 2008.

The landlord stated that the tenant was continuously behind in the payment of rent. As of March 2009 the tenant had only paid \$468.00 towards the rent owed for March. The landlord stated that he served the tenant with a 10 day Notice to End Tenancy on March 7, 2009 by posting on the door of the rental unit. The tenant is deemed to have received the notice on the third day after it was posted.

Subsequently the tenant abandoned the rental unit on April 4, 2009. The tenant did not pay the rent owed for April and did not provide a forwarding address.

The landlord seeks a monetary claim for the loss of rent due to the tenant's breach of the tenancy agreement. The landlord also seeks recovery of the filing fee paid for this application and requests to retain the tenant's security deposit plus interest in partial satisfaction of this claim.

Analysis

I grant the landlord's application. After receiving the 10 day Notice to End Tenancy the tenant had five days to either pay the outstanding rent owed or to file an application to dispute the notice. Having failed to exercise either of these rights the tenant is conclusively presumed to have accepted the end of the tenancy pursuant to section 46(5) of the *Act*. The tenant also remained responsible for the landlord's loss of rent for April 2009 when remaining in possession of the rental unit beyond the effective date of the 10 day Notice to End Tenancy.

I find that the landlord has established a total monetary claim for the sum of \$5,582.00 comprised of the rent owed of \$5,532.00 plus the \$50.00 filing fee paid by the landlord for this application. From this sum I Order that the landlord may retain the tenant's security deposit plus interest of \$1,504.80 in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance owed of **\$4,077.20**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is granted due to the tenant's failure to pay rent in breach of the tenancy agreement and *Act*.

Dated May 07, 2009.

Dispute Resolution Officer