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 Building Manager and the Tenant agreed that the Tenant is currently required to pay monthly rent of $755.00. The parties agree that a former co-tenant paid a security deposit of $250.00 for this rental unit on August 05, 1993.

The Building Manager and the Tenant agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had a stated effective date of April 13, 2009, was posted on the front door of the rental unit on, or about, April 03, 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 stated that he did not file an Application for Dispute Resolution after receiving the Notice to End Tenancy.

The Building Manager and the Tenant agree that the Tenant owes $605.00 in rent from April of 2009, $755.00 in rent from May of 2009, and $755.00 in rennet from June of 2009.

Analysis

The undisputed evidence is that the Tenant is currently required to pay monthly rent of $755.00.

The undisputed evidence is that a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act,* was posted on the front door of the rental unit on April 03, 2009.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on April 06, 2009.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to have received this Notice on April 06, 2009, I find that the earliest effective date of the Notice is April 16, 2009.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier that the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was April 16, 2009.

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 two days after it is served upon the Tenant.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of $2,115.00 for a portion of April of 2009, all of May of 2009, and all of June of 2009, and I find that the Landlord is entitled to compensation in that amount.

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.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenant. 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 $2,165.00, which is comprised of $2,115.00 in unpaid rent and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord is hereby authorized to retain the Tenant's security deposit plus interest, in the amount of $289.91, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of $1,875.09. 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: June 18, 2009.

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