



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 Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on June 16, 2009. A Canada Post receipt was submitted to corroborate this statement. The Canada Post website shows the mail was not retrieved by the Tenant. These documents are deemed to have been 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 Landlord submitted a written tenancy agreement that shows this tenancy began on December 01, 2008; that the Tenant is required to pay monthly rent of \$780.00; and that the Tenant paid a security deposit of \$390.00 on December 01, 2008. The Landlord stated that the Tenant actually only paid a security deposit of \$300.00.

The Landlord stated that a ten (10) day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 14, 2009, was posted on the front door of the rental unit on June 04, 2009. The Landlord submitted a note, dated June 15, 2009, from the Tenant that indicates he received the Notice to End Tenancy. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the



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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 Landlord stated that the Tenant still owes \$550.00 in rent from January of 2008 and \$780.00 in rent from June of 2009.

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 \$780.00. In the absence of evidence to the contrary, I accept the Landlord's evidence that the Tenant only paid \$300.00 of the \$390.00 that was due.

In the absence of evidence to the contrary, I accept that a 10 Day Notice to End Tenancy for Unpaid Rent was posted on the Tenant's door on June 04, 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 June 07, 2009, due to the fact that it was posted, I find that the earliest effective date of the Notice is June 17, 2009.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than 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 for Unpaid Rent was June 17, 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 \$550.00 for January of 2009 and \$780.00 for June of 2009, and that the Landlord is entitled to compensation in the amount of \$1,330.00.



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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 \$1,380.00, which is comprised of \$1,330.00 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 \$300.38, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,079.62. 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 *Residential Tenancy Act*.

Dated: June 24, 2009.

Dispute Resolution Officer