



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 dealt with an application for an Order of Possession and a monetary claim due to non-payment of rent by the tenant. The landlord submitted he served the tenant with notice of this application and hearing by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent. I accept the landlord's evidence that the tenant was served by registered mail and I have proceeded with the hearing in the tenant's absence.

Issues(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, 46, 55, and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

In the absence of a written tenancy agreement and the tenant, I accept the evidence of the landlord that this tenancy began on April 11, 2009 for the monthly rent of \$650.00. The landlord stated that the rent was due on the 1st of each month and the tenant was to pay a pro-rated rent for April 2009 and a security deposit of \$325.00.

The landlord stated that the tenant did not pay the pro-rated rent owed for April or the security deposit at the time she moved into the rental unit. The tenant also failed to pay the rent owed on May 1, 2009. The landlord stated that he sent the tenant a 10 day Notice to End Tenancy due to non-payment of rent on May 7, 2009 by registered mail. Pursuant to section 90 of the *Act* the notice is deemed to have been received by the on the fifth day after it was sent. The Notice states that the tenant had five days to pay the rent or to apply for Dispute Resolution to dispute the notice or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

The landlord submitted that on May 15, 2009 the tenant paid two separate amounts towards the rental arrears. The landlord issued two receipts which indicated that the

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money was being accepted for “use and occupancy only”. The tenant paid a total of \$975.00. The landlord stated that the tenant has subsequently failed to pay the rent owed for June 2009 and has avoided any attempts to discuss the circumstances. The landlord stated that he just received a cheque from the government, on behalf of the tenant, for \$650.00.

The landlord is seeking an Order of Possession due to the tenant’s failure to pay rent and a monetary claim for the outstanding rent owed. The landlord submits that the tenant currently owes the sum of \$1,083.40.

Analysis

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*. I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenant on May 12, 2009, and the effective date of the notice is amended to May 17, 2009 pursuant to section 53 of the *Act*.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*, despite paying a portion of the rent owed on May 15, 2009.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. Therefore, I find that the landlord is entitled to an Order of possession due to non-payment of rent. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I accept the evidence of the landlord that the tenant owes the sum of \$808.40 comprised of outstanding rent of \$2,383.40 less rent paid of \$1,625.00 (including the recently received cheque of \$650.00) plus the recovery of the \$50.00 filing fee paid by the landlord for this application. As the tenant did not pay a security deposit I am not required to offset this monetary claim. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.



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Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and a monetary Order for the sum of **\$808.40** due to the tenant's failure to pay rent.

Dated: July 08, 2009.

Dispute Resolution Officer