



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, 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 filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant submitted an Application for Dispute Resolution, in which she applied to set aside the Notice to End Tenancy for Unpaid Rent. As the Tenant did not attend the hearing in support of her application, I dismiss her application without leave to reapply.

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 service address noted on the Application, on June 17, 2009. A Canada Post Receipt with a tracking number was submitted as evidence. The Canada Post website shows the mail was not picked up by the recipient and that it was returned to the sender. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act*(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 *Act*.

Background and Evidence

The Landlord stated that this Tenant is required to pay monthly rent of \$850.00 and that she paid a security deposit of \$425.00 on January 14, 2008.

The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of June 07, 2009, was posted on the door of the rental unit on May 28, 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 Landlord stated that the Tenant still owes \$425.00 in rent from March of 2009; \$850.00 in rent from April of 2009; \$850.00 in rent from May of 2009; \$850.00 in rent from June of 2009; and \$850.00 in rent from July of 2009.

Analysis

Based on the evidence provided by the Landlord and the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required her to pay monthly rent of \$850.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the a Ten Day Notice to End Tenancy was posted on the Tenant's door, which required the Tenant to vacate the rental unit on June 07, 2009, pursuant to section 46 of the *Act*.

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 May 31, 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 May 31, 2009, I find that the earliest effective date of the Notice is June 10, 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 was June 10, 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.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid all of the rent that was due on May 01, 2009 and that she did not pay the outstanding rent within five days of receiving the Notice to End Tenancy. On this basis I accept that the tenancy should end and I will grant the Landlord an Order of Possession, pursuant to section 46 of the *Act* that is effective two days after it is served upon the Tenant.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$3,825.00 the months of March, April, May, June, and July of 2009, and 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.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$431.15, in partial satisfaction of the monetary claim.

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 \$3,875.00, which is comprised of \$3,825.00 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 \$431.15, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,443.85. 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.



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Residential Tenancy Branch
Ministry of Housing and Social Development

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: July 16, 2009.

Dispute Resolution Officer