



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 Agent for 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 27, 2009. A tracking number was provided. The Canada Post website shows the mail was not picked up by the recipient. 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 Agent for the Landlord stated that this tenancy began on April 01, 2009; that the Tenant is required to pay monthly rent of \$775.00 on the first day of each month; and that the Tenant paid a security deposit of \$387.50 on March 25, 2009.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 21, 2009, was sent to the Tenant at the rental unit by registered mail on June 06, 2009. A copy of a Canada Post receipt with a

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tracking number was submitted in evidence. The Canada Post website shows this mail was returned to the sender on June 30, 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 Agent for the Landlord stated that the Tenant still owes \$625.00 in rent from April of 2009; \$775.00 in rent from May of 2009; \$775.00 in rent from June of 2009; and \$775.00 in rent from July of 2009.

Analysis

On the basis of the testimony of the Agent for the Landlord and the written tenancy agreement submitted in evidence, 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 775.00.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on June 21, 2009, pursuant to section 46 of the *Act*.

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.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$2,950.00 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.



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I find that the Landlord is entitled to retain the Tenant's security deposit, in the amount of \$387.50, 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 \$3,000.00, which is comprised of \$2,950.00 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, in the amount of \$387.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,612.50. 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: July 16, 2009.

Dispute Resolution Officer