



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 initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as I had insufficient evidence at the Direct Request Proceeding to conclude that the Tenant had been properly served with the Notice of the Direct Request Proceeding.

The reconvened hearing was held to address 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 Agent for the Landlord and the Tenant agree that that this tenancy began on March 06, 2009; that the Tenant is required to pay monthly rent of \$385.00; and that the Tenant paid a security deposit of \$192.50 on March 03, 2009.

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The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for non-payment of rent, which had an effective date of May 17, 2009, was posted on the door of the rental unit on May 04, 2009. The Landlord submitted a Proof of Service of the Ten Day Notice to End Tenancy, in which an Agent for the Landlord declared that he posted this Notice on the door of the rental unit on May 04, 2009 at 1330 hours in the presence of another agent for the Landlord, who also signed the Proof of Service. The Tenant acknowledged receiving the Notice to End Tenancy on, or about May 04, 2009, although he does not recall whether he located it on his door or in his mail box.

The Ten Day Notice to End Tenancy declared 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 of \$385.00 that was due on May 01, 2009 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 and the Tenant agreed that on June 02, 2009 the Tenant paid his outstanding rent of \$385.00 that was due on May 01, 2009. The parties agreed that the Tenant was issued a receipt at that time that declared the rent money was being accepted for "use and occupancy only" and that when he paid his rent he was told that his tenancy would not be continuing.

The Agent for the Landlord and the Tenant agreed that on June 25, 2009 the Tenant paid his outstanding rent of \$385.00 that was due on June 01, 2009. The parties agreed that the Tenant was issued a receipt at that time that declared the rent money was being accepted for "use and occupancy only" and that when he paid his rent he was told that his tenancy would not be continuing.

The Agent for the Landlord and the Tenant agreed that that Tenant has still not paid rent that was due on July 01, 2009. The parties mutually agreed that the Landlord could keep the Tenant's security deposit in full satisfaction of the rent that was due for July of 2009 and in compensation for the fee that was paid for filing this Application for Dispute Resolution.

Analysis

The undisputed evidence is that the Tenant entered into a tenancy agreement that required him to pay monthly rent of \$385.00 on the first day of each month. 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.



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Based on the evidence provided by both parties, I find that the Tenant was served with a Notice to End Tenancy on May 04, 2009 that required the Tenant to vacate the rental unit on May 17, 2009, pursuant to section 46 of the *Act*.

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 the evidence shows that the Tenant did not exercise 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 on July 31, 2009 at 1:00 p.m.

Based on the mutual consent of the parties, I hereby authorize the Landlord to retain the Tenant's security deposit in full satisfaction of the rent that was due for July of 2009 and in compensation for the fee that was paid for filing this Application for Dispute Resolution

Conclusion

The Landlord has been granted an Order of Possession that is effective **at 1:00 p.m. on July 31, 2009**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia 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 27, 2009.

Dispute Resolution Officer