



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

OP, 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, 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 agent stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the tenant on June 5, 2009 at the rental unit. The landlord agent testified that he copied the Notice and gave one to the tenant and had the tenant sign the landlord copy. The landlord submitted the signed copy of the Notice as evidence of service.

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.

Preliminary Matter

At the commencement of the hearing the landlord's application for dispute resolution was amended to correct the tenant's name and to remove the landlord's request for an early end to the tenancy.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of possession, 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 55, 38, 67, and 72 of the *Residential Tenancy Act* (*Act*).

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$803.68 by the first day of each month. The tenant paid a security deposit of \$375.00 on October 14, 2004.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of May 29, 2009, was served on May 16, 2009 by posting

the Notice to the door of the rental unit. at 3 p.m. The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$2,887.21 in unpaid rent due on May 1, 2009 within five days of receiving the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy has ended and that the tenant must move out of the rental by the effective date of the Notice unless the tenant files an Application for Dispute Resolution within five days.

The landlord testified that on February 1, 2009 the tenant owed \$466.17 rent arrears. The landlord stated that the tenant failed to pay rent for March, April, May and June, 2009. The landlord testified that on June 10, 2009 the tenant paid the landlord by a bank draft in the sum of \$3,000.00. Initially the landlord stated that this payment made by the tenant was not for the purposes of rent owed, but the landlord did not provide an alternate explanation for the payment and subsequently the landlord stated this payment was for rent owed. The landlord stated that a receipt indicating use and occupancy only was issued to the tenant on June 10, 2009. The landlord did not supply this receipt as evidence.

Analysis

The landlord has issued a Notice to End Tenancy for Unpaid rent and, subsequently accepted a \$3000.00 payment from the tenant, which the landlord initially testified was not for rent owed. When questioned further the landlord testified that this payment did in fact constitute a rent payment. The landlord stated that the tenant was provided with a receipt for use and occupancy only.

I do not accept the landlord's statement that he provided the tenant with a receipt for use and occupancy of the rental unit only. I do not accept the landlord's testimony because he contradicted himself during the hearing when he first stated that the payment of \$3000.00 was for a purpose other than rent. As a result I do not have any confidence that the tenant was made aware that the payment of this money did not reinstate his tenancy.

In the absence of the actual receipt to confirm that the tenant was explicitly informed that the payment of \$3000.00 did not reinstate the tenancy, I find that the landlord did reinstate the tenancy. My conclusion is supported by the previous conduct of the parties as demonstrated by the rent ledger submitted as evidence by the landlord. This document shows a pattern of the tenant making partial rent payments and the landlord implicitly waiving his right to end the tenancy due to these repeated late payments of rent.

Therefore, I find that the Notice to End Tenancy issued on May 16, 2009 is cancelled and of no force or effect.

I find that the tenant owes the landlord a balance of \$680.89 rent for the month of June, 2009.

As the landlord's application has partial merit I find that the landlord is entitled to filing fee costs.

Conclusion

The Notice to End Tenancy issued on May 16, 2009 is of no force and effect and is cancelled. This tenancy will continue.

I find that the landlord has established a monetary claim, in the amount of \$730.89, which is comprised of \$680.89 in unpaid rent for June 2009 and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord is retaining a deposit plus interest of \$388.27. Section 72 of the Act allows a dispute resolution officer to set-off any amount owed by a tenant to a landlord from the deposit held in trust by the landlord. Therefore, I find that the landlord may retain the deposit plus interest in partial satisfaction of the claim made.

Based on these determinations I grant the landlord a monetary Order for the balance of \$342.62. 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.

Dated July 17, 2009.

Dispute Resolution Officer