



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 female Tenant via registered mail at the service address noted on the Application, on June 26, 2009. A tracking number was provided. The Canada Post website shows the mail was delivered on July 05, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the female Tenant did not appear at the hearing.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant via registered mail at the service address noted on the Application, on June 26, 2009. A tracking number was provided. The Canada Post website shows the mail was delivered on July 05, 2009. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the male 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 September 03, 2008; that the Tenants are required to pay monthly rent of \$900.00 on the first day of each month; and that the Tenants paid a security deposit of \$450.00 on August 31, 2008.

The Agent for the Landlord stated that she posted a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of May 16, 2009, on the door of the rental unit on May 06, 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 Tenants did not pay any rent for May of 2009 until July 21, 2009, at which time they paid \$500.00. She stated they paid an additional \$250.00 on July 24, 2009. She stated that the Tenants still owe \$150.00 in rent from May of 2009, \$900.00 in rent from June of 2009, \$900.00 in rent from July of 2009, and \$900.00 in rent from August of 2009.

The Agent for the Landlord stated that the Tenants also owe a late fee of \$25.00 for paying rent late in May. The Landlord submitted a copy of the tenancy agreement, in which the Tenants agreed to pay a late fee of \$25.00 whenever they are late paying rent. The Landlord did not apply for compensation for any other late fees in the Application for Dispute Resolution.

Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord that requires the Tenants to pay monthly rent of \$900.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants have not paid \$150.00 in rent from May of 2009, \$900.00 in rent from June of 2009, \$900.00 in rent from July of 2009, and \$900.00 in rent from August of 2009. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$2,850.00 in outstanding rent to the Landlord.]

I find that the Tenant did agree to pay a late payment fee in the tenancy agreement, as is required by section 7 of the Residential Tenancy Regulation. I therefore grant the Landlord's application for a \$25.00 late fee from May of 2009. As the Landlord did not

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apply for a late fee from any other months in which the Tenant failed to pay rent, I have not considered whether late payment fees are due for any other months.

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 a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on May 06, 2009.

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 09, 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 09, 2009, I find that the earliest effective date of the Notice is May 19, 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 May 19, 2009.

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.

As I have ordered the Tenants to pay rent for August of 2009, I hereby grant the Landlord an Order of Possession that is effective on August 31, 2009.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenants' security deposit plus interest, in the amount of \$452.27, in partial satisfaction of the monetary claim.



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Conclusion

The Landlord has been granted an Order of Possession that is effective on August 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.

I find that the Landlord has established a monetary claim, in the amount of \$2,925.00, which is comprised of \$2,850.00 in unpaid rent, \$25.00 in late fees, 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 \$452.27, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,472.73. 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: August 11, 2009.

Dispute Resolution Officer