



Dispute Resolution Services

Page: 1

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 the Dispute Resolution Officer at the Direct Request Proceeding had insufficient evidence to conclude that the Ten Day Notice to End Tenancy was properly served on the Tenant.

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.

The Agent for the Landlord stated that she personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant on July 03, 2009. 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 22, 2009; that the Tenant is required to pay monthly rent of \$750.00 on the first day of each month; and that the Tenant paid a security deposit of \$375.00 on April 22, 2009.

The Agent for the Landlord stated that she posted a ten (10) day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 13, 2009, on the door of the rental unit on June 03, 2009. The Notice declared that the Tenant owed \$750.00 in rent that

Residential Tenancy Branch
Ministry of Housing and Social Development

was due on June 01, 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 paid the outstanding rent of \$750.00 for June of 2009, plus \$375.00 in rent for July of 2009; plus a \$25.00 late fee, on June 30, 2009. The Agent stated that on June 30, 2009 the Tenant was advised that the tenancy would not be reinstated unless all of the rent owing was paid prior to this hearing date. She stated that the Tenant was issued with a receipt for the payment received on June 30, 2009, in which the Tenant was advised that the payment was being accepted for "use and occupancy only".

The Agent for the Landlord stated that the Tenant made no further payments after June 30, 2009. She stated that he still owes \$375.00 in rent from July of 2009 and \$750.00 in rent from August of 2009.

The Agent for the Landlord stated that the Tenant owes \$25.00 in late fees from July and \$25.00 in late fees from August. As the Landlord did not claim compensation for late fees in the Application for Dispute Resolution, I decline to consider the Landlord's application for late fees.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$750.00 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 Tenant still owes \$1,125.00 in rent from July and August of 2009. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,125.00 in outstanding rent to the Landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay rent when it was due on June 01, 2009. 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 June 03, 2009.

Residential Tenancy Branch
Ministry of Housing and Social Development

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 June 06, 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 June 06, 2009, I find that the earliest effective date of the Notice was June 16, 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 16, 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 Tenant 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 Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. 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 \$1,175.00, which is comprised of \$1,125.00 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 \$375.00, in partial satisfaction of the monetary claim.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Based on these determinations I grant the Landlord a monetary Order for the balance of \$800.00. 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 18, 2009.

Dispute Resolution Officer