



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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 Tenants for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that on August 14, 2009 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each of the Tenants via registered mail at the address noted on the Application. A tracking number was provided for each tenant. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Tenants did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement requires the Tenants to pay monthly rent of \$1,770.00. The Tenants paid a security deposit of \$850.00 at the start of the tenancy on September 30, 2005.

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The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of July 29, 2009, was served to the Tenants via registered mail sent to the rental unit address by registered mail on July 14, 2009. The Landlord provided a copy of the Canada Post receipt indicating the Notice was received by the Tenants on July 15, 2009. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$5,530.00 within five days after the Tenants are assumed to have received the Notice. The Notice also indicated that the Tenants are presumed to have accepted that the tenancy is ending and that the Tenants must move out of the rental by the date set out in the Notice unless the Tenants file an Application for Dispute Resolution within five days.

Analysis

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 Tenants are deemed to have received this Notice on July 15, 2009, I find that the earliest effective date of the Notice is July 29, 2009, the date included on the Notice.

In the absence of evidence to the contrary, I find that the Tenants were served with a Notice to End Tenancy that required the Tenants to vacate the rental unit on July 29, 2009, pursuant to section 46 of the *Act*.

Section 46 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. In the circumstances before me I have no evidence that the Tenants exercised either of these rights, therefore; pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy has ended.

The Landlord testified that on September 9, 2009 the landlord received a money order through the mail slot, in the sum of \$4,850.00; which left \$70.00 owing, however; the Tenants did not pay September rent owed. The Landlord testified that a receipt for the payment was not issued. The Landlord stated that on September 18, 2009 he spoke with the Tenants and asked why they had not yet paid September rent. The Landlord stated that he did not indicate to the tenants that the tenancy had been reinstated and that they continued to owe rent. On this basis I will grant the Landlord an Order of Possession that is effective two days after the order is served

In the absence of evidence to the contrary, I find that the Tenants have not paid rent in the amount of \$1,770.00 for September 2009, and that the Landlord is entitled to compensation in that amount.



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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.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$880.10, in partial satisfaction of the monetary claim.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after the notice has been served. This Order may be served on the Tenants, 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 \$1820.00, which is comprised of \$1,770.00 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 plus interest, in the amount of \$880.10, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$939.90. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: September 29, 2009.

Dispute Resolution Officer