



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, MNR, 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 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 on September 11, 2009 copies of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant via registered mail at the address noted on the Application. The landlord submitted a copy of a Canada Post tracking documents as evidence which indicates that on October 1, 2009 the tenant refused to accept service of the documents. As registered mail is deemed served on the fifth day after mailing, 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.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

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

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$1,238.00. The tenancy commenced on February 1, 2004 and a security deposit of \$550.00 was paid in January 2004.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of September 12, 2009, was served on September 2, 2009 by posting to the door of the rental unit. The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$1,238.00 in unpaid rent and a \$25.00 late fee within five days of service. The Notice also indicated that the



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tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant file an Application for Dispute Resolution within five days.

The Landlord stated that the tenant paid \$600.00 on September 14, 2009 and did not pay October rent. The landlord submits that the tenant now owes \$1,876.00 in unpaid rent.

Analysis

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 September 5, 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 September 5, 2009 I find that the earliest effective date of the Notice is September 15, 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 September 15, 2009.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on September 15, 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 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. On this basis I will grant the Landlord an Order of Possession that is effective **two days after it is served upon the tenant.**

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,876.00 for September and October 2009 and that the landlord is entitled to compensation in that amount.

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I dismiss without leave to reapply the landlord claim for late fees. The tenancy agreement signed in February 2004 includes a clause which breaches the Act by imposing a daily late fee of \$20.00. Section 7(1)(d) of the Residential Tenancy Regulation limits late fees to no more than \$25.00 for late payment of rent.

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.

The landlord has not applied to retain the deposit paid by the tenant, in partial satisfaction of the rent owed. However, section 72 of the Act allows a dispute resolution officer to order that money owed by a tenant to the landlord may be deducted from any security deposit or pet damage deposit due to the tenant. Therefore, I find that the landlord may retain the deposit, plus interest, in the sum of \$569.46 in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. 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 \$1,926.00.00, which is comprised of 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 **569.46**, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,356.54. 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: October 28, 2009.

Dispute Resolution Officer