



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 matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month to month tenancy started on May 1, 2009. Rent is \$850.00 per month. The Tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for August 2009 when it was due and as a result, on August 4, 2009, she left a copy of a 10 Day Notice to End Tenancy for Unpaid Rent in the Tenant's mail box. The Landlord said the Tenant has rent arrears of \$550.00 for August 2009 and \$850.00 for September 2009. The Landlord also claimed that pursuant to clause 6 of the tenancy agreement, the Tenant owed \$25.00 for each month she was late paying rent.

The Landlord provided only the 1st page of the 10 Day Notice as evidence at the hearing and the Tenant said she could not recall if she was served with both pages of that Notice.

Analysis

The Tenant did not apply to cancel the 10 Day Notice, however, section 52 of the Act says that in order for a Notice to End Tenancy from a Landlord to be effective (or enforceable), it must be in the approved form. The approved form of the 10 Day Notice to End Tenancy contains two pages; page two of the Notice provides information to a tenant about the Landlord's right to seek an Order of Possession if the tenant does not respond to the notice. The Landlord has not provided page two of the 10 Day Notice to End Tenancy and the Tenant could not recall if she received it. Consequently, I cannot



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conclude that a valid 10 Day Notice was served on the Tenant and accordingly, the Landlord's application for an Order of Possession is dismissed. The Parties agreed however that the Tenant would vacate the rental unit no later than October 21, 2009.

I find that the Landlord is entitled to recover unpaid rent of \$1,400.00 as well as \$50.00 for 2 late payment fees and the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

| | |
|-------------------------|-----------------|
| Rent arrears: | \$1,400.00 |
| Late fees: | \$50.00 |
| Filing fee: | <u>\$50.00</u> |
| Subtotal: | \$1,500.00 |
| Less: Security deposit: | (\$425.00) |
| Accrued interest: | <u>(\$0.00)</u> |
| Balance owing: | \$1,075.00 |

Conclusion

A Monetary Order in the amount of **\$1,075.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 07, 2009.

Dispute Resolution Officer