Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, MNR, MNSD, MNDC, 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, 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 was personally served to the tenant on September 27, 2009 with a neighbour present as a witness, at the rental unit at approximately 5:00pm. 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

The issues to be decided are whether the landlord is entitled to an Order of possession, 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 55, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of $600.00. The tenant paid a security deposit of $300.00 on June 1, 2009.

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 12, 2009 by posting the notice to the door of the rental unit at approximately 12 noon with a neighbour present as a witness. The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received $800.00 within five days of service. The Notice also indicated that the 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 $400.00 in August, no rent in September and that on October 28 or 29, 2009 the tenant paid $600.00. The landlord testified that when the tenant made the October payment he told the tenant that he must move out and that the landlord would proceed with this hearing. The landlord stated the tenant did not pay November rent owed and currently is in arrears in the sum of $1,400.00

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 15, 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 15, 2009 I find that the earliest effective date of the Notice is September 25, 2009.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier that 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 25, 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 25, 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 November 30 at 1:00 pm,** as requested by the landlord.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of $1,400.00 for November, October and 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 **$300.00** in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of possession that is effective **November 30, 2009 at 1:00 pm.** 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 $1,450.00, which is comprised of $1,400.00in 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 **$300.00**, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $1,150.00. 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: November 09, 2009.

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Dispute Resolution Officer