



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, 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 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 on September 18, 2009 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service. The Landlord testified that the mail was unclaimed by the Tenant and returned to the Landlord. These documents are deemed to have been served in accordance with section 89 of the *Act*, on the fifth day mailing; 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, damages or loss; 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy agreement requires the Tenant to pay monthly rent of \$700.00. The Tenant paid a security deposit of \$350.00 on May 25, 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 14, 2009, was served personally by the property manager to the tenant at the rental unit at approximately 4:00 pm. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$1,025.00 within five days after the Tenant is assumed to have received the Notice. The Notice also indicated that the Tenant is presumed to have accepted that the

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tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within five days.

The Landlord stated that the Tenant made a payment of \$400.00 and \$300.00 on September 14, 2009 resulting in September rent owed in the sum of \$250.00 and that she failed to pay rent for October and November, 2009 in the sum of \$1,400.00. The Landlord has claimed compensation for a NSF fee in the sum of \$25.00 for August and September and late fees in the sum of \$25.00 for each of October and November, 2009.

The Landlord testified that an addendum to the tenant agreement, entitled Policy and Procedures, included fees of \$30.00 for late payment and \$50.00 for NSF fees. The tenancy agreement, clause 10, states that a NSF fee of no more than \$25.00 shall be levied and that any amount charged by a financial institution will also be levied.

Analysis

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 14, 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.**

I find that clause 10 of the tenancy agreement contradicts the terms of the addendum and that the fees within the addendum exceed those provided in section 7 of the Residential Tenancy Regulation. Section 6 of the Act requires clear communication of the rights and responsibilities under a tenancy. As I find the terms contradictory I dismiss without leave, the claim for fees.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$1,650.00 for September, October and November, 2009, and that the Landlord is entitled to compensation in that amount.

The Landlord is retaining a deposit in the sum of \$350.00 and I find that the Landlord may retain this amount in partial satisfaction of the monetary claim.



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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.

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 \$1,700.00, which is comprised of \$1,650.00 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 **\$350.00**, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,350.00. 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.

The Landlord's claim for fees is dismissed without leave to reapply.

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 04, 2009.

Dispute Resolution Officer