



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

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 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 were sent to the Tenant via registered mail at the service address noted on the Application, on November 03, 2009. A tracking number was provided. The Canada Post website shows the mail was refused by the recipient and was returned to the sender. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (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 for unpaid rent; to 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 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on August 01, 2009; that the Tenant is required to pay monthly rent of \$1,200.00 on the first day of each month; and that the Tenant paid a security deposit of \$600.00.

The Agent for the Landlord stated that she put a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 20, 2009, under the front door of the rental unit on October 23, 2009. The Notice declared that the Tenant owed \$1,200.00 in rent that was due on October 01, 2009.

The Agent for the Landlord stated that the Tenant did not pay any rent for October or November of 2009.

The Agent for the Landlord stated that on November 09, 2009 or November 10, 2009 the Tenant advised the Landlord that he would be vacating the rental unit on November 16, 2009. She is not certain if the Tenant has vacated the rental unit.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,200.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants have not paid rent for October or November of 2009. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,400.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. I find that there is insufficient to conclude that the Landlord has served the Tenant with a Notice to End Tenancy in accordance with the *Act*.

Although section 88 of the *Act* allows a Notice to End Tenancy to be served in a variety of ways, including leaving it in a mail slot or by posting or attaching it to a door or other conspicuous place, I do not find that placing it under a door is the same as placing it in a mail slot or attaching it to a door or other conspicuous place. In these circumstances the Tenant cannot reasonably expect to receive important documents under his front door and there is a potential that he did not locate this Notice to End Tenancy.

As I am unable to ascertain that the Tenant received the Notice to End Tenancy or that he was properly served with the Notice to End Tenancy, I find that the Tenant has not been provided with appropriate notice pursuant to section 46(1) of the *Act*. On this basis, I dismiss the Landlord's application for an Order of Possession. The Landlord retains the right to serve this Notice to End Tenancy pursuant to section 88 of the *Act* and to file another Application for Dispute Resolution, in which the Landlord requests an Order of Possession.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit, in the amount of \$600.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,450.00, which is comprised of \$2,400.00 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 \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,850.00. 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 26, 2009.

Dispute Resolution Officer