



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, 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 for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. It is clear from information included on the Application for Dispute Resolution that the Landlord is also seeking compensation for late fees, therefore the Application for Dispute Resolution has been amended accordingly

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 address noted on the Application, on November 06, 2009 and were posted on the Tenant's door on November 05, 2009. A tracking number was provided. The Canada Post website shows the mail was refused by the recipient and 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.

Due to a scheduling error at the Residential Tenancy Branch the hearing did not proceed on November 27, 2009 as scheduled. Teleconference records indicate that the Landlord attended the hearing on November 27, 2009 but the Tenant did not. Residential Tenancy Branch personnel contacted the Landlord and reconvened the hearing on this date. Residential Tenancy Branch personnel were unable to contact the Tenant, as there was no phone number available for the Tenant, however the Landlord stated that she amended the date on the Notice of Hearing letter and re-posted it on the Tenant's door on November 30, 2009.

I find that the Tenant was properly served notice of the hearing on November 27, 2009; that she did not attend at that hearing; and that I can proceed with this reconvened hearing in the absence of the Tenant.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent and late fees, pursuant to sections 55 and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on May 01, 2007 and that the Tenant is required to pay subsidized rent of \$488.00. The Agent stated that there is a written tenancy agreement, which she believes was submitted in evidence. I did not have a copy of the tenancy agreement at the hearing and a search of the Residential Tenancy Branch records does not indicate that one was submitted in evidence.

The Agent for the Landlord stated that the Tenant did not pay rent when it was due on October 01, 2009 or November 01, 2009, although she did pay \$433.16 in rent towards the arrears on November 18, 2009.

The Agent for the Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 19, 2009, on the door of the rental unit on October 06, 2009. The Notice declared that the Tenant owed \$488.00 in rent that was due on October 01, 2009. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Agent for the Landlord stated that the Tenant also owes late fees of \$75.00 for paying rent late in September, October, and November of 2009. The Agent stated that the tenancy agreement requires the Tenant to pay a late fee of \$25.00 whenever they are late paying rent.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord and that she is currently required to pay subsidized rent of \$488.00 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 Tenant has not paid \$54.84 of the rent that was due for October of 2009 and \$488.00 of the rent that was due for November of 2009. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$542.84 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. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on October 06, 2009.

Section 46(4) 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 to End Tenancy. 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.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant agreed to pay a late payment fee in the tenancy agreement, as is required by section 7 of the Residential Tenancy Regulation. In reaching this conclusion I was strongly influenced by my inability to refer to the tenancy agreement prior to determining this matter. As I am unable confirm that the Tenant agreed to pay a late fee, I hereby dismiss the Landlord's application for \$75.00 in late fees.

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.

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 \$592.84, which is comprised of \$542.84 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$592.84. 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 30, 2009.

Dispute Resolution Officer