



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, 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 for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; 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 12, 2009. The Landlord submitted a Canada Post receipt that corroborates this statement. 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 a monetary Order for late fees; 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 June 01, 2007; that the Tenant is required to pay monthly rent of \$855.00 on the first day of each month; and that the Tenant paid a security deposit of \$412.50.

The Agent for the Landlord stated that the Tenant did not pay rent of \$155.00 when it was due on September 01, 2009; rent of \$855.00 when it was due on October 01, 2009; or rent of \$855.00 when it was due on November 01, 2009, leaving arrears in the amount of \$1,865.00.

The Agent for the Landlord stated that the Tenant paid \$1,571.08 towards those arrears on November 17, 2009, leaving arrears of \$293.92. The Agent stated that the Tenant was advised that this payment was being accepted for "use and occupancy only". The Agent for the Landlord stated that the Tenant paid \$821.08 on November 24, 2009, \$293.92 of which was applied to the arrears and \$527.16 of which was applied to rent for December. The Agent stated that the Tenant was advised that this payment was being accepted for "use and occupancy only".

The Agent for the Landlord stated that the Tenant did not pay rent when it was due on December 01, 2009, leaving arrears of \$327.84.

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 12, 2009, on the door of the rental unit on October 02, 2009.

The Landlord is claiming compensation for late fees for October and November of 2009, as provided for in the tenancy agreement that was submitted in evidence.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$855.00 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 rent of \$327.84 that was due on December 01, 2009. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$327.84 in outstanding rent to the Landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid rent, in the amount of \$1,100.00, when it was due on October 01, 2009. 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. In the absence of evidence to the contrary, I find that the a Ten Day Notice to End Tenancy was posted on the Tenant's door on October 02, 2009, which declared that the Tenant must vacate the rental unit by October 12, 2009, pursuant to section 46 of the *Act*.

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 October 05, 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 October 05, 2009, I find that the earliest effective date of the Notice is October 15, 2009.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than 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 October 15, 2009.

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 the order is served upon the Tenant.

The tenancy agreement shows that the Tenant did agree to pay a fee of \$25.00 whenever she is late paying her rent, as is required by section 7 of the Residential Tenancy Regulation. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay her rent on time in October and November of 2009, and that the Landlord is entitled to a late fee of \$25.00 for each month.

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

Conclusion

I hereby grant the Landlord 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 \$427.84, which is comprised of \$327.84, \$50.00 in late fees and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord is hereby authorized to retain \$427.84 from the Tenant's security deposit in full satisfaction of the monetary claim.

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: December 14, 2009.

Dispute Resolution Officer