



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, 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.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$775.00. The tenant paid a security deposit of \$387.50 on August 15, 2008.

The landlord stated that on September 29, 2009 a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of October 8, 2009 was served by placing it in the mail slot on the door of the rental unit. The Notice indicated that the

Notice would be automatically cancelled if the landlord received **\$550.00** 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 tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord testified that since January 2009 the tenant has had some rent arrears and that the October rent was paid on October 5, 2009. The landlord stated this payment was left in the drop box and that on October 14, 2009 they issued the tenant a letter confirming their intention to proceed with the request for an Order of possession.

The landlord provided a copy of a tenant ledger which indicates that after the payment made on October 5, 2009 the tenant had rent arrears, effective November 1, 2009 in the sum of \$1,325.00. The landlord is holding a cheque from the tenant for November rent and stated that December rent has not been paid.

The landlord's tenant ledger indicates the following payments:

January 2009	700.00
March	775.00
April	775.00
May	775.00
June	775.00
July	775.00
August	775.00
September	475.00
October	775.00
November	775.00
December	0
Total owed	9,300.00
Total paid	7,975.00
Arrears	1,325.00

The tenant testified that he has recently faced a number of personal challenges that have caused him to get behind in his rent payments. The tenant stated that he did receive the Notice to End Tenancy but could not recall the date; the tenant stated he had been in the hospital. The tenant confirmed that once he received the Notice he did not dispute the Notice by making Application for Dispute Resolution.

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 October 2, 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 2, 2009, I find that the earliest effective date of the Notice is October 12, 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 October 12, 2009, pursuant to section 46 of the Act. I find that the landlord's intentions were clear and the landlord did not reinstate the tenancy.

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 on the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,325.00 for arrears since January 2009 and that the landlord is entitled to compensation in that amount.

Section 72(2)(b) provides means to order payment to a landlord from a security deposit held in trust, when a tenant is required to make a payment to the landlord. Therefore, I find that the landlord may retain the deposit plus interest in the sum of \$389.71.

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

The landlord has been granted an Order of Possession that is effective two days after the notice has been served. 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 **\$1,375.00**, which is comprised of \$1,325.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. As provided by section 72 of the Act, the landlord will be retaining the tenant's security deposit plus interest, in the amount of \$389.71, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$985.29**. 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: December 03, 2009.

Dispute Resolution Officer