



Dispute Resolution Services

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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.

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.

Preliminary Matter

The Application was amended to include a claim for unpaid March rent.

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?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of 975.00 due on the first day of the month. A deposit in the sum of \$487.50 was paid on September 25, 2009.

The tenant confirmed receipt of a Ten (10) Day Notice to End Tenancy for non-payment of rent, which was posted to the door on January 5, 2010, which had an effective date of January 18, 2010. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$975.00 rent and a \$20.00 late fee 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 tenant acknowledged that she has not paid rent for January, February and March, 2010 in the sum of \$2,925.00. The tenant also acknowledged that the landlord is entitled to a January NSF fee of \$20.00 and three late payments fees for January to March, inclusive.

Analysis

I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on January 18, 2010, 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 service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,925.00 for January to March, 2010, inclusive and that the landlord is entitled to compensation in that amount. I find that the landlord is entitled to late fees of \$20.00 per month from January to March inclusive and one NSF fee in the sum of \$20.00 as the tenant confirmed the tenancy agreement clause which levies these fees.

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.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$487.50, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective two days after service on 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 \$3,055.00, which is comprised of \$2,925.00 in unpaid January, February and March, 2010, rent; \$60.00 in late fees and a \$20.00 NSF fee 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 \$487.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$2,567.50**. 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: March 11, 2010.

Dispute Resolution Officer