



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, 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 a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on April 8, 2010, at approximately noon, she and her sister-in-law attended at the rental unit and personally served the tenant with copies of the Application for Dispute Resolution and Notice of Hearing.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

At the start of the hearing the Application was amended to reflect the tenant's correct service address; which is the same as the dispute address.

The Application was also amended to reflect the landlord's intention to receive a monetary order in the sum claimed on the Application, as the result of unpaid rent from January to April, 2010, inclusive.

A copy of the 10 Day Notice for Unpaid Rent was not included in the evidence submitted by the landlord. The landlord was requested to send a copy of the Notice to the Residential Tenancy Branch no later than noon on April 19, 2010.

The landlord explained that English is not her first language and that the errors on the Application and paperwork are the result of confusion in relation to translation.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenant moved in on December 23, 2009 and the landlord issued a receipt for a \$900.00 payment made for a \$625.00 deposit and \$275.00 toward January 2010, rent owed. Rent is \$1,250.00 due on the first day of each month.

The landlord received cheques for January, February and March rent. The January and February cheques were returned as NSF and the landlord was unable to negotiate the March cheque, despite several attempts to do so; as the bank confirmed there were insufficient funds in the tenant's account.

The landlord stated that at noon on March 28, 2010, a Ten (10) Day Notice to End Tenancy for non-payment of rent, which had an effective date of April 6, 2010, was personally served to the tenant, at the rental unit, with the landlord's husband present as a witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,375.00 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.

During the hearing the landlord provided details from the Notice that she had before her. The Notice was issued on March 28, 2010, and signed by the landlord. The landlord confirmed that she made an error on the document and that the date rent was due should have indicated March 1, 2010.

The landlord has received a total of \$900.00 from the tenant and is claiming the balance of rent owed in the sum of \$4,725.00.

Analysis

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 April 7, 2010.

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 April 7, 2010, pursuant to section 46 of the Act.

The copy of the Notice submitted by the landlord after the conclusion of the hearing indicates that the amount owed and dates the rent was due indicate \$3,315 and that the amount of \$4,725.00 has been notated on the document. The month the rent owed indicates January and the landlord has now added a notation for April.

Section 52 of the Act determines the form and content of a Notice to end tenancy; that is must be in the approved form, signed and dated, state the effective date and the grounds for ending the tenancy. The required content has been included on the Notice and established prior to receipt of the copy of the Notice and I find that, despite the alterations made to the amount owed and the month rent was owed, that the tenant has been served with a Notice that included all of the information required by 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 the Order is served.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$4,725.00 for January to April, 2010, inclusive, and that the landlord is entitled to compensation in that amount.

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 \$625.00, in partial satisfaction of the monetary claim.

I have enclosed a copy of a *Guide for Landlords and Tenants in British Columbia* in the Punjabi language, for reference by the landlord.

Conclusion

The landlord has been granted an Order of Possession that is effective two days after it is served to 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 \$4,775.00, which is comprised of \$4,725.00 in unpaid January to April, 2010, 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 \$625.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$4,150.00**. 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: April 16, 2010.

Dispute Resolution Officer