

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 #2 stated that she personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant on March 20, 2010. In the absence of evidence to the contrary, I find these documents 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; a monetary Order for unpaid rent, parking fees, and fees for paying rent late; 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 November 01, 2007; that the Tenant is required to pay monthly rent of \$839.00 on the first day of each month; and that the Tenant paid a security deposit of \$405.00.

The Agent for the Landlord stated that the Tenant did not pay rent when it was due on March 01, 2010. The Agent for the Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit, which had a declared effective date of March 12, 2010, on March 02, 2010.

The Agent for the Landlord stated that the Tenant paid the rent and parking fees for March on March 29, 2010. The Agent stated that the Tenant was given a receipt for March rent, in which the Tenant was advised that the rent was being accepted for "use and occupancy only".

The Agent for the Landlord stated that the Tenant paid the rent and parking fees for April on April 01, 2010, and that the Tenant overpaid the rent by \$1.00 on April 01,

2010. The Agent stated that the Tenant was given a receipt for April rent, in which the Tenant was advised that the rent was being accepted for "use and occupancy only".

The Agent for the Landlord stated that the Tenant paid the rent and parking fees for May on May 01, 2010. The Agent stated that the Tenant was given a receipt for May rent, in which the Tenant was advised that the rent was being accepted for "use and occupancy only". The Agent stated that the cheque that was tendered for May rent has not yet cleared the bank, so she is not certain that the cheque will be honoured.

The Agent for the Landlord stated that the Tenant still owes \$19.00 in rent from February of 2010.

The Landlord submitted a copy of a tenancy agreement that shows the Tenant agreed to pay a late fee of \$20.00 each time he did not pay rent on time. The Landlord is seeking compensation of \$20.00 because the Tenant did not pay rent when it was due in March of 2010.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$839.00 on the first day of each month.

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 rent when it was due on March 01, 2010 and that it was not paid until March 29, 2010.

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 Tenant was served with a Notice to End Tenancy on March 02, 2010, 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 March 05, 2010.

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 March 05, 2010, I find that the earliest effective date of the Notice is March 15, 2010.

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 March 15, 2010.

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 find that the Landlord is entitled to an Order of Possession.

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 at 1:00 p.m. on May 31, 2010. 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 \$70.00, which is comprised of \$20.00 in late fees and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I find that this amount must be reduced by the \$1.00 overpayment that was made on April 01, 2010.

I hereby authorize the Landlord to retain \$69.00 from the security deposit that was paid by the Tenant, in full satisfaction of the monetary claim.

The Landlord retains the right to seek compensation for rent from May of 2010 if the rent cheque that was tendered on May 01, 2010 is not honoured by the Tenant's financial institution.

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: May 04, 2010.

Dispute Resolution Officer