

## **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.

The Agent for the landlord provided affirmed testimony that on April 7, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### **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 tenant?

Is the landlord entitled to filing fee costs?

### **Background and Evidence**

The tenancy agreement requires the tenant to pay monthly rent of \$1,000.00 by the first day of the month. The tenant paid a security deposit of \$500.00 on September 8, 2009.

The landlord stated that on March 4, 2010, she placed a Ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of March 14, 2010, in the tenant's mail slot. A copy was also placed under the tenant's door. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,050.00 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 has claimed compensation in the sum of \$25.00 per month in late fees for March, April and May, 2010. Clause 6 of the tenancy agreement submitted as evidence includes this fee. The landlord is claiming NSF fees for the failure of the direct deposit payments to process in March, April and May, 2010 in the sum of \$25.00 per month, as per clause 6 of the tenancy agreement.

The tenant paid March rent in the middle of the month and a receipt for use and occupancy was issued. Payment of April rent owed was made on May 11, 2010, and another receipt for use and occupancy was issued to the tenant. The tenant did not pay May rent owed.

Therefore, the landlord is claiming unpaid May rent in the sum of \$1,000.00, late fees in the sum of \$75.00 and NSF fees in the sum of \$75.00.

### Analysis

Section 90 of the Act stipulates that a document that is left in a mail slot is deemed to be received on the third day after it is placed in the mail slot. I therefore find that the tenant received the Notice to End Tenancy on March 7, 2010; three days after service.

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 7, 2010, I find that the earliest effective date of the Notice is March 17, 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 17, 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 March 17, 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 \$1,000.00 for May, 2010, and that the landlord is entitled to compensation in that amount.

I find that the landlord is entitled to the late and NSF fees as claimed in the sum of \$150.00, as they are a term of the tenancy agreement and comply with Residential Tenancy Regulations.

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 \$500.00, in partial satisfaction of the monetary claim.

I note that the landlord has included late fees with the rent owed, on the Notice to End Tenancy. A Notice to End Tenancy should reflect only unpaid rent and utilities; fees are not considered rent or utility costs and should be notated separate from rent and utilities owed.

### Conclusion

The landlord has been granted an Order of Possession that is effective two days after service 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 \$1,200.00, which is comprised of \$1,000.00 May, 2010, unpaid rent, \$75.00 late fees and \$75.00 NSF fees from March to May, 2010 inclusive 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 \$500.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$700.00. 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: May 19, 2010.

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Dispute Resolution Officer