

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, FF

Introduction

This was a cross-Application hearing.

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, for loss and damage, 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 tenant made Application to cancel a Notice ending tenancy for unpaid rent.

The landlord provided affirmed testimony that on April 16, 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 and copy of the receipt was provided as evidence of service.

These documents are deemed to have been served in accordance with sections 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matter

This hearing commenced at the scheduled start time of 1:30 p.m. The hearing concluded at 1:43 p.m. without the tenant having entered the conference call hearing.

The Applications was amended to include loss of revenue for May, 2010, 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 for unpaid rent?

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 \$800.00 on the first day of each month. The tenant paid a security deposit of \$187.50 on January 15, 2010. The landlord testified that the tenant has refused to sign a tenancy agreement.

The landlord stated that on April 2, 2010 a Ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of April 12, 2010 was personally to the tenant by the landlord's son at the rental unit in the late afternoon.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$425.00 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 included only the amount being claimed for April unpaid rent on the Notice. The landlord testified that the tenant pays \$375.00 by direct payment monthly, from a government agency. The tenant then owes the balance of rent due, \$425.00 on the first day of each month. The tenant has not paid the \$425.00 balance owed since the tenancy commenced in January 2010.

The landlord is claiming compensation in the sum of \$425.00 for each of January, February, March and April, 2010. The landlord is also claiming unpaid May rent in the sum of \$800.00 as the tenant did not have her direct payment deposited to the landlord's account in May.

The Notice to end tenancy issue dated appeared to have been altered from April 1 to April 2, 2010. The landlord testified that the Notice was issued on April 2, 2010.

Analysis

In the absence of evidence to the contrary, I find that the tenant was served on April 2, 2010, with a Notice to End Tenancy that required the tenant to vacate the rental unit on April 12, 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. The tenant made Application to dispute the Notice but has failed to attend her hearing at this time to support of her Application. Therefore, 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 2 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 \$2,500.00 for January to May, 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 \$187.50, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 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 \$2,550.00, which is comprised of \$2,500.00 in unpaid rent from January 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 \$187.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,362.50. 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.

As the tenant failed to attend this hearing in support of her Application I find that her Application is dismissed without leave to reapply.

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 20, 2010.

Dispute Resolution Officer