

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, a monetary Order for unpaid rent, compensation for damage or loss, to retain 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, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

The landlord's Application was amended to include unpaid rent for June, 2010.

The Application was amended to remove the claim for compensation for damage or loss.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

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 tenancy commenced on April 1, 2008, rent is currently \$1,600.00 per month, due on the first day of the month. A deposit in the sum of \$825.00 was paid on April 1, 2008.

The tenant acknowledged receipt of a 10 Day Notice for unpaid rent issued on April 14, 2010. The Notice indicated that the tenant owed \$2,600.00 in unpaid rent.

The tenant confirmed that he has not paid any rent since March 26, 2010, when he paid \$1,050.00 leaving rent arrears in the sum of \$1,000.

The tenant now owes the landlord \$5,800.00 which includes the arrears from March, 2010, and unpaid rent for April to June, 2010, inclusive.

Evidence submitted by the landlord indicates that the tenant has not had his rent fully paid since August 17, 2009.

The landlord provided a copy of the 10 Day Notice to End Tenancy for non-payment of rent, which had an effective date of March 19, 2010, which was posted to the door on April 14, 2010. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,600.00 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.

Analysis

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 April 17, 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 April 17, 2010, I find that the earliest effective date of the Notice is April 27, 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 April 27, 2010.

The tenant acknowledged that he owes rent to the landlord and did not dispute the Notice.

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. As the tenant did not exercise either of these rights, I find, pursuant to section 46(5) of the Act, 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.

Based upon the tenant's acknowledgment and the evidence before me, I find that the tenant has not paid rent in the amount of \$4,800.00 for April to June, 2010 inclusive, plus \$950.00 rent arrears owed over the period from August 18, 2009 to March 26, 2010, and that the landlord is entitled to compensation in that amount. I have deducted \$50.00 from the \$1,000.00 arrears indicated on the tenant ledger submitted as evidence as this was a fee for a previous hearing.

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 \$834.30, 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 \$5,800.00, which is comprised of \$950.00 rent arrears from August 18, 2009 to March 26, 2010, \$4,800.00 unpaid rent from April to June, 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 \$834.30, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$4,965.70**. 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: June 16, 2010.

Dispute Resolution Officer