



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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.

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, all of which has been reviewed, to present affirmed oral testimony and to make submissions during 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 tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$804.57 due on the first day of the month. The tenancy agreement referenced by the landlord during the hearing indicated that parking of \$15.00 per month is to be added as part of rent owed. The tenant paid a security deposit of \$362.50 on January 1, 2007.

The landlord and tenant agreed that on March 15, 2010 a Ten (10) Day Notice to End Tenancy for non-payment of rent, which had an effective date of March 28, 2010, was served by posting to the door. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$754.14 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 Notice had a hand-written note indicating that the landlord had a post-dated cheque in the sum of \$300.00 for March 19 and that the tenant would then owe \$454.14.

The parties agreed that the following payments had been made:

	Rent paid	Balance owed
January payment reversal – March 4		419.57
March 9	500.00 NSF	1,224.14
March 19	300.00	924.14
April 6	800.00	928.71
May 6	800.00	933.28
June		1,737.85

The parties agreed that in January, 2010, an error was made which attributed a payment in the sum of \$415.00 to the tenant's account. This error was corrected on March 4, 2010 and the \$415.00 arrears was added to the tenant's account.

On April 14, 2010, the landlord issued the tenant a receipt for use and occupancy only in relation to the March 19 and April 6 payments received. No discussions had occurred with the tenant in relation to the April 6, 2010, payment, that was given to the landlord via a mail slot in the building.

The landlord is claiming an NSF fee in the sum of \$25.00 levied on March 12, 2010; as provided by clause 10)b) of the tenancy agreement.

The landlord is claiming the unpaid portion of the rent owed for parking from February to June inclusive in the sum of 75.00.

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 March 18, 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 18, 2010, I find that the earliest effective date of the Notice is March 28, 2010.

I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on March 28, 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 did not pay the outstanding rent and did not apply to cancel the Notice, pursuant to section 46(5) of the Act; therefore 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 June 15, 2010, at 1 p.m.; as requested by the landlord.

I find that the tenant has not paid rent in the amount of \$1,737.85 for March to June, 2010, inclusive and that the landlord is entitled to compensation in that amount.

I find that the landlord is entitled to the March NSF fee in the sum of \$25.00.; a term of the tenancy agreement that complies with the Act.

I find that the landlord is entitled to parking that is part of rent owed in the sum of \$75.00 for the months of February to June 2010, inclusive.

I find that the landlord's application has merit and, pursuant to section 71 of the Act that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find, pursuant to section 38 of the Act, that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$373.46, in partial satisfaction of the monetary claim.

Therefore, I find that the landlord is entitled to the following compensation:

2010	
March NSF fee	25.00
February to March parking	75.00
	1,837.85
Less the deposit plus interest	373.46
	1,464.39
Less \$50.00 filing fee	1,414.39

Conclusion

The landlord has been granted an Order of Possession that is effective **June 15, 2010, at 1 p.m.** 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 \$1,837.85, which is comprised of \$1,737.85 in unpaid for February to June, 2010, rent; parking; NSF fees 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 \$373.46, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,414.39**. 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 03, 2010.

Dispute Resolution Officer