

DECISION

Dispute Codes:

OPR, MNR, 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 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord stated that on May 21, 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 in accordance with section 89 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?

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 due on the first day of month.

The landlord stated that on May 5, 2010, a Ten (10) Day Notice to End Tenancy for non-payment of rent, which had an effective date of May 18, 2010, was served by posting to the door. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,710.00 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.

On June 12, 2010, the tenant paid his outstanding May rent, April rent arrears, late and NSF fees plus parking owed in May. The tenant did not pay June rent owed in the sum of \$1,000.00. The landlord is claiming compensation for June parking in the sum of \$55.00 and a late fee in the sum of \$25.00.

The landlord testified that parking is included in the tenancy agreement as part of rent and that the terms of the written tenancy agreement also include a late fee in the sum of \$25.00.

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 May 8, 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 May 8, 2010, I find that the earliest effective date of the Notice is May 18, 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 May 18, 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. The tenant failed to pay the outstanding rent within five days of service of the Notice. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served.

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 June, 2010, parking fees that are part of rent owed in the sum of \$55.00 and the June late rent fee in the sum of \$25.00 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.

The landlord has not applied to retain any deposit that may have been paid by the tenant. Any deposit held in trust by the landlord must be disbursed as required by section 38 of the Act.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service. 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 \$1,130.00, which is comprised of \$1,000.00 in unpaid June rent, \$55.00 June parking, \$25.00 late June rent payment and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,130.00. 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: June 17, 2010.

Dispute Resolution Officer