



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent; authorization to retain the security deposit for unpaid rent and recovery of the filing fee. The tenant did not appear at the hearing. The landlord provided a registered mail receipt to prove the landlord sent the hearing documents to the tenant at the rental unit on June 16, 2010. The landlord testified the registered mail was returned as unclaimed and that the landlord sent the documents to the tenant again by regular mail. On August 9, 2010 the tenant called the landlord to enquire about the meaning of the documents she received. Having been satisfied the landlord served the hearing documents in a manner that complies with the Act, I proceeded to hear from the landlord without the tenant present.

The landlord requested the application be amended to include loss of rent since the application was filed. Upon hearing the tenant has continued to reside in the rental unit I accepted the request for amendment and this decision includes loss of rent up to and including the month of August 2010.

Issues(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession for unpaid rent?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent and loss of rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The landlord provided the following undisputed evidence. The tenancy commenced April 16, 2009. The tenant paid a \$494.50 security deposit. The monthly rent payable by the tenant is subsidized and currently the tenant is required to pay \$641.00 on the 1st day of every month. On June 4, 2010 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and sent it to the tenant via registered mail on June 4, 2010. The Notice indicates \$1,057.89 was outstanding as of June 1, 2010 and had an effective date of June 15, 2010. The tenant subsequently made partial payments totalling \$550.00 in June 2010 leaving a balance of \$507.89 at the end of June 2010.

The landlord testified that as of today's date the tenant owes \$689.89 including loss of rent for July and August 2010 and partial payments received in July and August 2010.

As evidence for the hearing the landlord submitted a copy of the tenancy agreement, the Notice and a ledger of the tenant's account.

Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Since the landlord served the 10 Day Notice via registered mail on June 4, 2010 the Notice is deemed to be received by the tenant five days later on June 9, 2010.

Where a tenant does not pay the rent in full or dispute the Notice within five days of receiving the Notice, section 46(5) of the Act provides that the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date. I note the effective date on the Notice is incorrect and it has automatically changed to read June 19, 2010 in accordance with section 53 of the Act. Therefore, I find the tenancy ended June 19, 2010.

Since the tenant continues to occupy the rental unit the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two days after service of the Order of Possession upon the tenant. The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover unpaid rent and loss of rent of \$689.89 from the tenant for the months up to and including August 2010. As the landlord was successful with this application I also award the \$50.00 filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed by the tenant. I provide for the landlord with this decision a Monetary Order in the amount of \$245.39 including the filing fee (\$689.89 + \$50.00 – \$494.50).

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$245.39 to serve upon the tenant.

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: August 18, 2010.

Dispute Resolution Officer