



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened 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, a monetary Order for damage to the rental unit; a monetary Order for money owed or compensation for damage or loss; 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.

At the hearing the Landlord withdrew the application for a monetary Order for anything other than unpaid rent.

The male Landlord stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant on July 07, 2010. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that this tenancy began approximately four years ago; that the Tenant is currently required to pay monthly rent of \$600.00 on the first day of each month; and that the Tenant paid a security deposit of \$275.00 when this tenancy began.

The female Landlord stated that the Tenant has not paid \$200.00 in rent that was due on June 01, 2010 and that she owes \$150.00 from previous months, although she

cannot specifically recall when the debt had accrued and they have no records of when payments were missed.

The male Landlord stated that he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 30, 2010, on June 01, 2010. The Notice declared that the Tenant owed \$1,200.00 in rent that was due on October 01, 2009.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$600.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent for June of 2010, in the amount of \$200.00. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$200.00 in outstanding rent to the Landlord.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant also owes \$150.00 in outstanding rent. In reaching this conclusion I was heavily influenced by the Landlord's inability to recall what month(s) this debt relates to and the absence of documentary evidence that establishes this amount of rent is outstanding. As the Landlord does not specifically recall the date of this missed payment(s), I find that I cannot conclude, with reasonable certainty, that the money is owed.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. 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 XXXXX, pursuant to section 46 of the *Act*.

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by XXXXXX, pursuant to section 46 of the *Act*.

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 XXXXX.

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 XXXXXX, I find that the earliest effective date of the Notice is XXXXXX.

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 XXXXXX.

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. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served upon the Tenant.

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 \$XXXXX, in partial satisfaction of the monetary claim.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective **two days after it is served upon the Tenant OR at 1:00 p.m. on March 31, 2009**. 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 \$2,450.00, which is comprised of \$2,400.00 in unpaid rent 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 \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,850.00. 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*.

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Dated: August 27, 2010.

Dispute Resolution Officer