



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, OPR, MNR, MNDS, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an 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 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.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to a monetary Order for loss of revenue; to a monetary Order for late fees; 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)*.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Notice to End Tenancy should be set aside and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution, pursuant to sections 46(4) and 72 of the *Act*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on August 15, 2008 and that the Tenant paid a security deposit of \$537.50 on August 08, 2008.

The Agent for the Landlord stated that the Tenant is currently required to pay monthly rent of \$1,090.00 on the first day of each month, which includes a \$15.00 fee for an additional parking space. The Tenant stated that he is currently required to pay monthly rent of \$1,100.00 on the first day of each month, which includes a \$25.00 fee for an additional parking space

The Tenant stated that he moved out of the rental unit on August 31, 2010; that he left some exercise equipment and a washer and dryer in the rental unit; that he met with an agent for the Landlord on September 07, 2010 for the purposes of completing a Condition Inspection Report; that he did not return the keys on that date because he intended to clean the rental unit more thoroughly. The Agent for the Landlord stated that the keys to the rental unit have not yet been returned and that the Landlord changed the locks to the rental unit on September 08, 2010.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of August 08, 2010, was posted on the door of the rental unit on July 27, 2010. The Tenant stated that his son located the Notice to End Tenancy on July 28, 2010, although the Tenant did not view it until August 01, 2010 as he had been out of town. The Notice declared that the Tenant owed \$1,480.00 in rent that was due on July 01, 2010.

The Landlord is seeking compensation, in the amount of \$2,470.00 in unpaid rent plus loss of revenue from the month of September of 2010, in the amount of \$1,090.00.

The Landlord submitted a copy of a ledger that shows rent of \$75.00 in rent is outstanding from October of 2009; \$190.00 in rent is outstanding from January of 2010; \$15.00 is outstanding from February of 2010; \$15.00 is outstanding from March of 2010; \$15.00 in outstanding rent from April of 2010; that in May of 2010 he paid \$10.00 towards his arrears; that in June of 2010 he paid \$10.00 towards his arrears; and that rent of \$1,090.00 is outstanding from July of 2010, which equals \$1,380.00.

The Tenant contends that his rent has been paid, in full, until July 31, 2010. He stated that he has paid his rent in full for October of 2009; January of 2010; February of 2010; March of 2010; and April of 2010, although he submitted no evidence to corroborate this statement. He stated that he provided the Landlord with a cheque for July on July 01, 2010; he was not advised by his financial institution that the cheque had been dishonoured; that he was not advised by the Landlord that payment had not been received until he received the Notice to End Tenancy; and that he has subsequently checked with his bank and determined that the rent cheque for July 01, 2010 has been processed. He submitted no evidence to corroborate this statement.

The Agent for the Landlord acknowledged that a copy of the rent cheque for July of 2010 was not submitted in evidence. She made reference to the ledger entry of July 09, 2010, in which the ledger indicates that a cheque for \$1,100.00 was returned due to insufficient funds.

The Agent for the Landlord and the Tenant agree that the rent cheque tendered by the Tenant for August of 2010 has been returned to him by the Landlord and that he has not subsequently paid rent for August or September of 2010.

The Agent for the Landlord and the Tenant agree that the tenancy agreement that the Tenant signed at the beginning of the tenancy requires him to pay a fee of \$25.00 whenever he is late paying his rent. The Landlord is seeking a \$25.00 late fee because the Tenant did not pay his rent in full in February of 2010; a \$25.00 late fee because the Tenant did not pay his rent in full in March of 2010; a \$25.00 late fee because the Tenant did not pay his rent in full in April of 2010; and a \$25.00 late fee because the Tenant did not pay his rent for July of 2010.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$1,090.00 on the first day of each month. Although the Tenant believes he is required to pay \$1,100.00, the Landlord's ledger indicates the monthly rent is only \$1,090.00 and I find that the Tenant is not obligated to pay more rent than the amount that is being requested by the Landlord.

After hearing the conflicting evidence regarding rent payments for October of 2009, January of 2010, February of 2010, March of 2010, and April of 2010, I find that the Tenant's rent is in arrears for those months, in the amount of \$290.00. I favoured the evidence of the Agent for the Landlord over the evidence of the Tenant in this regard as the ledger that was submitted in evidence corroborates the Agent for the Landlord's testimony while the Tenant submitted no evidence, such as cancelled cheques, that establishes his rent was paid in full. I therefore find that the Tenant must pay the Landlord \$290.00 in unpaid rent for the period prior to July 01, 2010, as is required by section 26(1) of the *Act*.

After hearing the conflicting evidence regarding rent payments for July of 2010, I find that the Tenant's rent cheque for rent for July was returned to the Landlord by the Tenant's financial institution. I favoured the evidence of the Agent for the Landlord over the evidence of the Tenant in this regard as the ledger that was submitted in evidence corroborates the Agent for the Landlord's testimony that a cheque for \$1,100.00 was returned due to insufficient funds, while the Tenant submitted no evidence, such as a bank statement, that corroborates his testimony that his rent cheque from July of 2010 cleared his financial institution. I therefore find that the Tenant must pay the Landlord \$1,090.00 in rent for July of 2010, as is required by section 26(1) of the *Act*.

As the Tenant acknowledged that he did not pay rent for August of 2010, I find that the Tenant must pay the Landlord \$1,090.00 in rent for August, 2010, as is required by section 26(1) of the *Act*.

As the Tenant did not pay his rent, in full, for February, March, April, and July of 2010 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to late fees of \$100.00. The Landlord has not applied for late fees from August or September of 2010 so those fees have not been awarded.

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. As the Tenant acknowledged that his son found the Notice to End Tenancy posted on his door on July 28, 2010, I find that the Tenant was properly served with a Notice to End Tenancy that required the Tenant to vacate the rental unit 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 July 30, 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 July 30, 2010, I find that the earliest effective date of the Notice is August 09, 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 August 09, 2010.

I find that the Landlord has the right to end this tenancy as the Tenant had not paid all of the rent that was due by July 01, 2010 and he has not since paid the outstanding rent. I therefore find that the Landlord is entitled to an Order of Possession on the basis of the Notice to End Tenancy that was served to him. On this basis I will grant the landlord an Order of Possession that is effective immediately.

I find that the Tenant disputed the Notice to End Tenancy and that he was not, therefore, required to vacate the rental unit on the effective date of the notice, which was August 09, 2010. I find that on September 01, 2010 the Tenant still had lawful possession of the rental unit, as he still had some personal property in the rental unit; he did not give the Landlord proper notice of his intent to vacate the rental unit on August 31, 2010; and he had not yet returned the keys to the rental unit. As the Tenant still had lawful possession of the rental unit on September 01, 2010, I find that he was obligated to pay rent on September 01, 2010, as is required by section 26(1) of the *Act*.

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 of \$537.50 plus interest, in the amount of \$3.22, in partial satisfaction of the monetary claim, pursuant to section 72(2) of the *Act*.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective immediately. If the rental unit does not now have possession of the rental unit, 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 \$3,710.00, which is comprised of \$2,470.00 in unpaid rent for the period prior to August 31, 2010; \$1,090.00 in rent that was due on September 01, 2010; \$100.00 in late 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 \$540.72, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,169.28. 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.

As I have found that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*, I dismiss the Tenant's application to set aside a Notice to End Tenancy for Unpaid Rent and to recover the cost of filing his Application for Dispute Resolution.

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: September 09, 2010.

Dispute Resolution Officer