



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 and Utilities, a monetary Order for unpaid rent and utilities, 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. It is readily apparent from information on the Application for Dispute Resolution that the Landlord is claiming compensation for late fees and the Application for Dispute Resolution has been amended accordingly.

The male Agent for the Landlord stated that he personally served the Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on October 22, 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 and utilities; to a monetary Order for unpaid rent and utilities and 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)*.

Background and Evidence

The male Agent for the Landlord stated that this tenancy began on February 01, 2008; that the Tenant is currently required to pay monthly rent of \$807.00 on the first day of each month; and that the Tenant paid a security deposit of \$375.00 on January 08, 2008.

The female Agent for the Landlord stated that she put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 14, 2010, on the door of the rental unit on October 04, 2010. The Notice declared that the Tenant owed \$1,579.00 in rent that was due on October 01, 2010.

The male Agent for the Landlord stated that the Tenant owed \$1,579.00 in rent on October 01, 2010; that he paid \$800.00 towards this debt on October 22, 2010, for which he was given a receipt indicating that the payment was accepted for use and occupancy only; that he did not pay rent of \$807.00 when it was due on November 01, 2010; and that he paid \$900.00 on November 15, 2010, for which he was given a receipt indicating that the payment was accepted for use and occupancy only.

The Landlord is also seeking compensation, in the amount of \$25.00, for the months of September, October, and November of 2010, as the Tenant did not pay rent when it was due. The Landlord submitted a copy of the tenancy agreement, in which the Tenant agreed to pay a fee of \$25.00 whenever he is late paying rent.

The Landlord is seeking compensation, in the amount of \$106.87, for hydro charges. The male Agent for the Landlord stated that the hydro bill is currently in the Tenant's name and that the hydro charges will be charged to the Landlord if they are not paid by the Tenant.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$807.00 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 owed rent of \$1,579.00 on October 01, 2010.

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 a Notice to End Tenancy that required the Tenant to vacate the rental unit on October 14, 2010, pursuant to section 46 of the *Act*, was posted at the rental unit on October 04, 2010.

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 October 07, 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 October 07, 2010, I find that the earliest effective date of the Notice is October 17, 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 October 17, 2010.

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 and that the Landlord is entitled to an Order of Possession.

I find that the Tenant paid all of the rent that was due for September and October by November 15, 2010, but that he still owes \$686.00 in rent from November of 2010. As the Tenant is required to pay rent, pursuant to section 26 of the *Act*, I find that the Tenant must pay this amount to the Landlord.

As the Tenant did not pay his rent when it was due in September, October, and November 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 \$75.00 for those months.

I find that the Landlord's claim for compensation for unpaid utilities is premature. In the event that the Tenant does not pay his hydro bill and those charges are subsequently transferred to the Landlord, the Landlord has the right to file an Application for Dispute Resolution seeking to recover those costs. At this point it has not been established that the Tenant does not intend to pay the hydro charges.

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.

Conclusion

I hereby grant the Landlord an Order of Possession that is at 1:00 p.m. on November 30, 2010. 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 \$811.00 which is comprised of \$686.00 in unpaid rent, \$75.00 in late fees, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2), I authorize the Landlord to retain the Tenant's security deposit plus interest, in the amount of \$380.52, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$430.48. 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: November 17, 2010.

Dispute Resolution Officer