



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNDC, MND, 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, a monetary Order for unpaid rent, damage to the unit, damages and loss under the Act, 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 agent for the landlord provided affirmed testimony that November 03, 2010, the tenant was served with Notice of this hearing by registered mail sent to her rental unit address. A copy of the Canada Post receipt and 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.

Preliminary Matters

The landlord did not proceed with the portion of the application in relation to loss of rent revenue or damages to the rental unit.

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 for unpaid rent?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2010, rent is \$858.00 per month due on the first day of each month. A deposit in the sum of \$411.50 was paid at the start of the tenancy.

The landlord stated that on October 6, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of October 19, 2010, was served by posting to the door of the rental unit. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$749.73 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.

The landlord submitted a copy of a receipt issued for use and occupancy only dated December 6, 2010. The tenant had paid \$2,475.00 by placing a money order in a mail slot. The receipt was posted to the tenant's door. The landlord submitted that the tenant currently owes \$246.07 for December rent.

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 October 9, 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 October 19, 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, therefore; 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 2 days after service to the tenant.

In relation to the amount owed to the landlord, I have determined that the tenant owed the following:

- \$749.73 October, 2010, rent balance included on the Notice issued October 6, 2010;

- \$1,716.00 rent for November and December; totalling
- \$2,465.73.

The tenant has now paid the landlord \$2,475.00; therefore, from the evidence before me, I find that the tenant has paid all rent, to December, 2010, inclusive, in full, with an overpayment in the sum of \$9.27.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee, less \$9.27 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 in the amount of \$40.73, in satisfaction of the filing fee costs.

Conclusion

Based on the conclusive presumption the landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. 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 \$31.46, which is comprised of the balance of the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$31.46, in satisfaction of the monetary claim.

If this tenancy continues the landlord will then retain the balance of the deposit in the sum of \$380.04 to be disbursed as provided by the Act

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: December 16, 2010.

Dispute Resolution Officer