



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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, a monetary Order for unpaid rent, 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.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

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?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on July 1, 2010; rent is \$800.00 due on the first day of the month; a deposit in the sum of \$400.00 was paid on June 14, 2010.

The tenant confirmed receipt of a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 22, 2011, sent to him via registered mail

on January 7, 2011. The landlord provided a copy of the Canada Post registered mail receipt as evidence of service.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,060.00 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 tenant did not dispute the Notice and during the hearing the parties agreed that the tenant paid November and December, 2010, rent on December 17, 2010.

The tenant agreed that he paid only \$400.00 rent in January, 2011 and that he has not paid February, 2011, rent owed.

The landlord has claimed late payment fees in the sum of \$25.00 for each of November, December, 2010 and January and February, 2011; as provided by clause of 10 of the tenancy agreement submitted as evidence.

Analysis

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 January 12, 2011, I find that the earliest effective date of the Notice is January 22, 2011.

Based on the evidence before me I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on January 22, 2011, 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. The tenant confirmed he has not paid the rent owed within 5 days, nor has he disputed the Notice; 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 two days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,200.00 for January and February 2011, and that the landlord is entitled to compensation in that amount.

I find that the landlord is entitled to late fees in the sum of \$100.00 from November, 2010, to February 2011, inclusive.

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 in the amount of \$400.00, in partial satisfaction of the monetary claim.

Conclusion

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 \$1,350.00, which is comprised of \$1,200.00 in unpaid rent, \$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 \$400.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$950.00. 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.

Dated: February 25, 2011.

Residential Tenancy Branch