



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, damage or 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.

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. I have considered all of the evidence and testimony provided.

Preliminary Matter

The landlord confirmed the portion of the claim request compensation for damage loss related to unpaid September, 2011, rent owed and 2 strata fines totaling \$100.00.

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 tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2006; a deposit in the sum of \$337.50 was paid. Rent is currently \$750.00 per month.

The tenant confirmed that she received a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 2, 2011, that was served by posting to her door. The landlord posted the Notice on July 19, 2011.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,275.00 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 confirmed she has been in arrears since September, 2010, when she paid \$85.00 for rent. The tenant has not made any payments since June, 2011. The tenant did not dispute that she currently owes the landlord \$4,775, for rent from September, 2010, to September, 2011, inclusive; as set out in the landlord's summary of payments. The tenant confirmed she did not dispute the Notice as she believed the matter would be dealt with during this hearing.

The landlord claimed the cost of 2 strata bylaw fines in the sum of \$50.00 each; the tenancy agreement submitted as evidence did not include any terms referencing strata fines.

A copy of a summary of payments made by the tenant since September, 2010, was supplied as evidence. The summary indicated that the tenant has paid \$4,990.00 since September, 2010.

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 July 22, 2011.

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 August 2, 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 did not pay the rent owed and did not dispute 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 the order is served.

During the hearing the tenant acknowledged the total owed, as set out in the landlord's summary of rental account evidence. I have checked the amounts and find that from September 2010, to September, 2011, the tenant owed rent in the sum of \$9,000.00. The rental summary indicated that the tenant had made payments in the sum of \$4,990.00; resulting in rent arrears in the sum of \$4,010.00. the tenant may have believed she owed the landlord the amount indicated on the 10 day Notice; however it appears the Notice may have included some fees or other costs.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$4,010.00 for rent owed from September, 2010 and September, 2011, inclusive and that the landlord is entitled to compensation in that amount.

In the absence of a term of the tenancy agreement that imposes strata fines that portion of the claim is dismissed. The landlord has not provided evidence of any other claim.

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 \$389.90, 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 \$4,060.00, which is comprised of unpaid rent from September, 2010 to September, 2011, inclusive 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 \$389.90, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$3,670.10. 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.

The balance of the claim is dismissed.

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 02, 2011.

Residential Tenancy Branch