



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes: OPR, MND, MNR, MNSD, MNDC, OPT, 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 damage to the rental unit, 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. At the hearing the Landlord stated that he did not intend to file an application for compensation for damages and the Application for Dispute Resolution has been amended accordingly.

The Tenant filed an Application for Dispute Resolution, in which the Tenant made application for an Order of Possession and a monetary Order for money owed or compensation for damage or loss.

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

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on August 25, 2011, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

The Tenant stated that he submitted additional documents to the Residential Tenancy Branch on September 22, 2011, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence however I was unable to locate the documents that were submitted to the Residential Tenancy Branch. The Tenant stated that these documents were highly relevant to his claim for compensation.

The hearing proceeded on September 28, 2011 for the purposes of determining the merit of the Landlord's application. The hearing was subsequently adjourned to provide the Tenant with the opportunity to resubmit the evidence that supports his Application claim for financial compensation.

Issue(s) to be Decided

The issues to be decided in this interim decision are whether either party is entitled to an Order of Possession; whether the Landlord is entitled to a monetary Order for unpaid rent; whether the Landlord is entitled to keep all or part of the security deposit; and whether the Landlord is entitled 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 Landlord and the Tenant agree that this tenancy began on November 19, 2003 and that the Tenant is currently required to pay monthly rent of \$1,520.00 on the first day of each month.

The Landlord stated that the Tenant paid a security deposit of \$575.00 on November 19, 2003; that Tenant stated that he believes he paid a security deposit of approximately \$600.00; and a notation on the tenancy agreement indicates a security deposit of \$595.00 was paid.

The Landlord and the Tenant agree that the Tenant paid a pet damage deposit of \$650.00 sometime in 2008 or 2009, although neither can recall the date of the payment.

The Landlord and the Tenant agree that the Tenant has not paid all of the rent that is due for this tenancy, and that he currently owes rent for May, June, and July of 2011. The Landlord stated the Tenant owes \$520.00 from April. The Tenant acknowledged that some rent is due for April, although he is uncertain of the amount.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy was posted on the rental unit prior to July 24, 2011, which declared that the Tenant must vacate the rental unit by August 01, 2011.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$1,520.00 on the first day of each month.

I find that the Tenant paid a security deposit of \$595.00 on November 19, 2003. Although the Landlord stated that a deposit of \$575.00 was paid and the Tenant is uncertain of the amount, I find that the notation on the tenancy agreement, which indicates \$595.00 was paid, is the most reliable.

I find that the Tenant paid a pet damage deposit of \$650.00 on an unknown date.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant currently owes \$4,560.00 in rent from May, June, and July of 2011. As the Tenant did not dispute the Landlord's claim that he owes \$520.00 in rent from April of 2011, I find that the Tenant owes \$520.00 from April.

When rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that a Notice to End Tenancy was posted at the rental unit by July 24, 2011, which directed the Tenant to vacate the rental unit by August 01, 2011, pursuant to section 46 of the *Act*.

As the Tenant has failed to pay the rent that was due and the Tenant has no legal basis for withholding the rent, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. On this basis I grant the landlord an Order of Possession and I dismiss the Tenant's application for an Order of Possession.

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.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon 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 \$5,180.00, which is comprised of \$5,080.00 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$595.00, his pet damage deposit of \$650.00, plus interest of \$21.05, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,913.95. 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: September 28, 2011.

Residential Tenancy Branch