



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened 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, a monetary Order for money owed or compensation for damage or loss; 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 outset of the hearing the Agent for the Landlord withdrew the application to retain all or part of the security deposit.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution, the Notice of Hearing, and evidence was sent to the Tenant at the rental unit on the Application for Dispute Resolution, via registered mail, on January 20, 2012. The Landlord submitted Canada Post documentation that corroborates this statement and shows that the mail was delivered on January 23, 2012. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

At the hearing the Agent for the Landlord applied to amend the Application for Dispute Resolution to include compensation for unpaid rent from February of 2012. As the Tenant is still occupying the rental unit and it is reasonable to assume that the Tenant is aware she is obligated to pay rent while she remains in possession of the rental unit, the Application for Dispute Resolution has been amended accordingly.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and late fees; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on December 01, 2005; and that the Tenant is currently required to pay subsidized monthly rent of \$595.00 on the first day of each month.

The Agent for the Landlord stated that the Tenant did not pay any rent for December of 2011 or January of 2012 until January 30, 2012, at which time she paid \$820.00, which was accepted for use and occupancy only. The Agent stated that the Tenant still owes \$370.00 in rent from January and \$595.00 for February of 2012.

The Agent for the Landlord stated that he put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 16, 2012, on the door of the rental unit on January 04, 2012.

The Landlord applied for compensation for fees imposed when rent is not paid on time. The Agent for the Landlord stated that the Tenant has not agreed, in writing, to pay a late fee.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$595.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants had not paid rent for December or January by January 01, 2012, and that \$820.00 of that rent was paid on January 30, 2012. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay the \$370.00 in outstanding rent from December and January of 2012 and \$595.00 in rent from February of 2012.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on January 04, 2012.

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 January 07, 2012.

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 07, 2012, I find that the earliest effective date of the Notice is January 17, 2012.

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 January 17, 2012.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. 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. On this basis I find that the Landlord is entitled to an Order of Possession. As the Landlord has been granted a monetary Order for rent from February of 2012, I find that this Order of Possession should be effective at the end of February.

Section 7(1)(d) of the *Residential Tenancy Regulation* stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the *Residential Tenancy Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee. As there is no evidence that the tenancy agreement provides for a late fee, I dismiss the Landlord's compensation for late fees. The Tenant retains the right to file an Application for Dispute Resolution seeking to recover any late fees that have been paid during this tenancy.

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 effective at 1:00 p.m. on February 29, 2012. 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 \$1,015.00, which is comprised of \$965.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,015.00. 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.

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: February 08, 2012.

Residential Tenancy Branch