



Dispute Resolution Services

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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, 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 stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on April 25, 2012. The Landlord submitted Canada Post documentation that corroborates this statement. 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.

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include a claim for unpaid rent from May of 2012, as that rent has not yet been paid. As I find that it would be reasonable for the Tenant to expect that the Landlord is seeking all of the rent that is currently due, I find it reasonable to amend this Application for Dispute Resolution to include a claim for unpaid rent for May.

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; to keep all or part of the security deposit; and 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 Agent for the Landlord stated that this tenancy began on November 15, 2011; that the Tenant is required to pay monthly rent of \$650.00 by the first day of each month; and that the Tenant paid a security deposit of \$325.00.

The Agent for the Landlord stated that the Tenant did not pay the rent that was due on April 01, 2012 and that she did not pay the rent that was due on May 01, 2012.

The Agent for the Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of April 20, 2012, on the door of the rental unit on April 12, 2012.

The Agent for the Landlord stated that the Tenant was charged a late fee of \$35.00 because the rent cheque she tendered for March of 2012 was not honored by her financial institution, which resulted in her rent being paid after it was due. The Landlord submitted a copy of the tenancy agreement in which the Tenant agreed to pay a late fee of \$25.00 when rent is not paid on time. The Agent for the Landlord stated that the Tenant has only paid \$10.00 of the \$25.00 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 required the Tenant to pay monthly rent of \$650.00 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 Tenant has not paid \$650.00 in rent from April of 2012. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$650.00 in outstanding rent to the Landlord.

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 a Notice to End Tenancy was posted at the rental unit on April 12, 2012, which directed the Tenant to vacate the rental unit by April 20, 2012, pursuant to section 46 of the *Act*.

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 April 15, 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 April 15, 2012, I find that the earliest effective date of the Notice was April 25, 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 April 25, 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 Tenant did not vacate the rental unit by April 25, 2012, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she has already been ordered to pay rent for the period between April 25, 2012 and April 30, 2012 I find that the Landlord has been duly compensated for that period. I also find that the Tenant must compensate the Landlord for the fourteen days in May that she remained in possession of the rental unit, at a daily rate of \$20.96, which equates to \$293.44. As I do not know when the Tenant will vacate the rental unit, I find that I am unable to award compensation for unpaid rent for any other days in May of 2012. The Landlord retains the right to file another application seeking unpaid rent for May of 2012 if the Tenant remains in possession of the rental unit.

As the Tenant did not pay her rent when it was due on March 01, 2012 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Tenant is obligated to pay a late fee of \$25.00 for the month of March of 2012. As the Tenant has only paid \$10.00 of this fee, I find that she still owes the Landlord \$15.00 in late fees.

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 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 \$1,008.44, which is comprised of \$943.44 in unpaid rent, \$15.00 in late fees, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit, in the amount of \$325.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$683.44. 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: May 14, 2012.

Residential Tenancy Branch