



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 applied to amend his application to claim compensation for unpaid rent from June of 2012. The Tenant did not oppose the application and the Application for Dispute Resolution has been amended accordingly.

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, which included a Notice to End Tenancy and a money order, 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 no evidence in regards to this matter.

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 Landlord and the Tenant agree that this tenancy began on March 01, 2012; that the monthly rent of \$690.00 is due by the first day of each month; that the Landlord extended the due date for rent in May to May 07, 2012; and that the Tenant paid a security deposit of \$345.00.

The Agent for the Landlord stated that the Tenant did not pay rent for May of 2012 when it was due on May 07, 2012; that on May 16, 2012 the Landlord received a money order in the amount of \$777.50 which was applied to the Tenant's outstanding rent for May of 2012; that there is nothing on the money order that indicates that it is from the Tenant; that he does not know why the money was applied to the Tenant's debt; and that no rent has been paid for June of 2012.

The Tenant stated that he has not paid any rent for May or June of 2012; the he did not give the Landlord a money order in the amount of \$777.50; and that this payment should not be applied to his rental arrears.

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 May 24, 2012, on the Tenant's door on May 14, 2012. The Tenant stated that he located this Notice on May 15, 2012, which he believes was slid under his door.

Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$690.00 by the first day of each month.

Based on the testimony of the Tenant, I find that the Tenant has paid no rent for May or June of 2012. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,380.00 in outstanding rent to the Landlord. In reaching this conclusion I fully accepted the Tenant's testimony that he did not give the Landlord a money order in the amount of \$777.50, as there would be no reason for him to be untruthful regarding this payment.

If rent is not paid when it is due, a tenancy may be ended by serving notice to end the tenancy in accordance with section 46 of the *Act*. Based on the Tenant's testimony, I find that on May 15, 2012 the Tenant received a Ten Day Notice to End Tenancy that directed the Tenant to vacate the rental unit by May 24, 2012, pursuant to section 46 of the *Act*.

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.

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

As the Tenant is being ordered to pay rent for June of 2012, I find it appropriate that he be permitted to occupy the rental unit until June 30, 2012. I therefore grant the Landlord an Order of Possession that is effective at 1:00 p.m. on June 30, 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 \$1,430.00, which is comprised of \$1,380.00 in unpaid rent and \$50.00 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, in the amount of \$345.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,085.00. 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: June 19, 2012.

Residential Tenancy Branch