



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MND, MNSD, MNDC, 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, 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 outset of the hearing the Agent for the Landlord withdrew the application for a monetary Order for damage to the rental unit, as that claim was made in error.

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 August 22, 2012. The Agent for the Landlord cited a Canada Post tracking number 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.

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; 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 October 01, 2011; that the Tenant is required to pay monthly rent of \$965.00 by the first day of each month; and that the Tenant paid a security deposit of \$482.50.

The Agent for the Landlord stated that the Tenant did not pay any rent for August or September of 2012.

The Agent for the Landlord stated that she put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of August 18, 2012, on the front door of the rental unit on August 08, 2012. The Notice declared that the Tenant owed \$990.00 that was due on August 01, 2012, \$25.00 of which was for a late fee.

The Landlord is seeking compensation, in the amount of \$50.00, as the Tenant did not pay rent when it was due on August 01, 2012 and September 01, 2012. In the tenancy agreement, which was submitted in evidence, the Tenant agreed to pay a fee of \$25.00 whenever she is late paying rent by more than three days.

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 requires the Tenant to pay monthly rent of \$965.00 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 did not pay any rent for August of 2012. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$965.00 in rent for August to the Landlord.

As the Tenant did not pay rent when it was due on August 01, 2012 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid within three days of it being due, I find that the Landlord is entitled to a late fee of \$25.00 for the month of August 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 Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on August 08, 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 August 11, 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 August 11, 2012, I find that the earliest effective date of the Notice is August 21, 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 August 21, 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 on August 21, 2012, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As he has already been ordered to pay rent for the period between August 21, 2012 and August 31, 2012, I find that the Landlord has been compensated for that period.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has paid no rent for September of 2012. I find that the Tenant must compensate the Landlord for the 25 days in September that he remained in possession of the rental unit, at a daily rate of \$32.16, which equates to \$804.00. I have not awarded compensation for the remainder of September as I cannot be certain that the Tenant will not vacate the rental unit by the end of today and the Landlord has not filed a claim for lost revenue.

As the Tenant had ended prior to September 01, 2012 I find that rent was not technically due on that date. I therefore decline to award a late fee for the month of September.

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 \$1,844.00, which is comprised of \$1,769.00 in unpaid rent, a \$25.00 late fee, 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 of \$482.50 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,361.50. 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 25, 2012.

Residential Tenancy Branch