



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, MNSD, MNDC, and FF

Introduction

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

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 a monetary Order for money owed or for compensation for damage or loss under the *Residential Tenancy Act (Act), Regulation*, or tenancy agreement; 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 *Act*.

Background and Evidence

The Landlord and the Tenant agree that the Tenant is required to pay monthly rent of \$1,200.00, and that he paid a security deposit of \$600.00 on May 28, 2008.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of September 10, 2008, was placed under the Tenant's door on September 01, 2008. The Tenant stated that he located the Notice to End Tenancy on September 05, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$1,300.00 within five days after the Tenant is assumed to have received the Notice. The Notice also indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within five days.

The Landlord and the Tenant agree that the Tenant still owes \$1,200.00 in rent from September of 2008. The Landlord and the Tenant agree that the tenancy can continue until October 31, 2008, with the understanding that the Tenant will pay rent for October of 2008.

The Landlord is claiming compensation, in the amount of \$100.00, for bank fees he incurred due to the Tenant not paying his rent on time. He stated that the bank charge him \$100.00 because he had insufficient funds to cover his mortgage payment, which was a direct result of the Tenant not paying his rent.

The Landlord is claiming compensation, in the amount of \$200.00, for a fine that was assessed to him by his Strata Corporation. The Landlord and the Tenant agree that the Strata Corporation fined the Landlord \$200.00 because the Tenant improperly disposed of garbage on July 29, 2008. The Tenant stated that he has disputed the fine, in writing, but that he has not yet received a response from the Strata Corporation.

Analysis

On the basis of the Tenant's testimony, I find that the Notice to End Tenancy was sufficiently served on the Tenant for the purposes of this Act on September 05, 2008, pursuant to section 71(2) of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me, the evidence shows that the Tenant did not exercise 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 the basis of the Landlord's agreement to extend the tenancy until October 31, 2008. I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on October 31, 2008. The Tenant must vacate the rental unit on or before that time and date.

On the basis of the agreement between the two parties, I find that the Tenant must pay the Landlord \$2,400.00 in rent for September and October of 2008.

Section 7 of the *Residential Tenancy Regulation* authorizes landlords to charge tenants a service fee charged to the landlord by a financial institution for the return of a tenant's cheque. In the circumstances before me, the Landlord has applied for a service fee for charges he incurred because there were insufficient funds in his bank account, not because the bank returned a cheque tendered by the Tenant. I find that the legislation does not authorize me to compensate the Landlord for the bank charges he incurred under these circumstances, and I hereby dismiss his application for compensation for bank service fees.

As the matter regarding the Strata Corporation fine is still in dispute, and the Landlord may not be required to pay the fine, I find the application for compensation for this

amount is premature. I hereby dismiss the Landlord's application for compensation for the fine, with leave to reapply on that issue if the Tenant's dispute is not successful.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$603.25, in partial satisfaction of the monetary claim.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on October 31, 2008. 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 \$2,450.00, which is comprised on \$2,400.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$1,846.75, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,846.75. 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.

Date of Decision: October 06, 2008
