Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 18, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which indicates that the Landlord mailed a package to the rental unit. The Canada Post Website shows that this package was mailed on March 18, 2009 but had not yet been received by the recipient.

The Landlord received the Direct Request Proceeding package on March 16, 2009 and initiated service two days later. Section 90 of the Residential Tenancy Act determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is March 23, 2009.

Based on the written submissions of the Landlord, I find the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

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 *Act.*

Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant.

- A copy of a residential tenancy agreement between the Landlord and the Tenant, which indicates that the tenancy began on August 15, 2004, at which time the Tenant was required to pay monthly rent of $750.00. The agreement also shows that the Tenant paid a security deposit of $375.00 on August 15, 2004.

- A copy of a Notice of Rent Increase that indicates that the rent was increased from $750.00 to $785.00 on January 01, 2008. This represents a 4.6% rent increase, which is not compliant with section 43(1)(a) of the Act, which only allowed a 3.7% increase in 2008.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on December 05, 2008, which I presume is not the Notice that the Landlord is seeking to enforce.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on September 10, 2008, which I presume is not the Notice that the Landlord is seeking to enforce.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on March 04, 2009, which I presume is the Notice that the Landlord is seeking to enforce. This Notice states that the Tenant must vacate the rental unit by March 16, 2009 as he has failed to pay rent in the amount of $785.00 that was due on March 01, 2009. The Notice states that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.

- A Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent, which indicates that the Landlord posted the Notice on the Tenant's door at approximately 1000 hours on March 04, 2009. The Proof of Service was signed by the Landlord's son to indicate that he witnessed the posting of the Notice.

- The Application to Review, in which the Landlord stated that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door on March 04, 2009, and that the Tenant still owes $785.00 in rent from March of 2009.

Analysis

Based on the evidence provided by the Landlord, I find that the Landlord and the Tenant had a tenancy agreement that required the Tenant to pay monthly rent of $750.00. In the absence of evidence that establishes that the rent was lawfully increased to $785.00 on January 01, 2008, I can not concluded that the Tenant owed monthly rent in excess of $750.00. I base this conclusion on my determination that the $35.00 rent increase that was imposed on January 01, 2008 exceeds the 3.7% allowable rent increase.

Based on the evidence provided by the Landlord, I find that the Tenant did not pay any rent for March of 2009. I have no evidence to show that the Tenant paid any money towards his March rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that the Tenant owes rent for March in the amount of $750.00.

Based on the evidence provided by the Landlord, I find that a 10 Day Notice to End Tenancy was posted on the front door of the rental unit on March 04, 2009.

I have no evidence to show that the Tenant filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy. Pursuant to section 46(5) of the *Act,* I therefore find that the Tenant has accepted that the tenancy ended ten days after he is deemed to have received the Notice.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on 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 $800.00, which is comprised on $750.00 in unpaid rent from March of 2009, plus $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord is hereby authorized to retain the Tenant's security deposit plus interest, in the amount of $388.28, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of $411.72. 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.

Dated March 26, 2009.

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