



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled 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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

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 relevant oral evidence, to ask relevant questions, and to make relevant 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; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on November 01, 2008 and that the Tenant is required to pay monthly rent of \$1,400.00. The parties agree that no rent has been paid for January, February, March, or April of 2009.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for non-payment of rent, which had an effective date of March 03, 2009, was sent by regular mail to the Tenants on March 10, 2009. This Notice was not submitted in evidence.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for non-payment of rent, which had an effective date of April 07, 2009, was sent by registered mail to the Tenants on March 27, 2009. The Landlord submitted a Canada Post receipt that shows a package was sent to the Tenants at the rental unit on March 27, 2009. A copy of this Notice was submitted in evidence.



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The Agent for the Landlord stated that the Ten Day Notice dated March 27, 2009 was posted on the front door of the rental unit in the afternoon of March 27, 2009.

The Tenant stated that he did not receive a Notice to End Tenancy, although he was unable to state if the other Tenant received a Notice to End Tenancy.

The Landlord is claiming compensation, in the amount of \$30.00, for a rent cheque that was returned due to insufficient funds.

The Landlord is claiming compensation, in the amount of \$208.44, for administrative fees and mailing costs associated with this dispute. The Landlord is also seeking to recover the \$100.00 filing fee for this Application for Dispute Resolution.

Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord, and that the Tenant is currently required to pay monthly rent of \$1,400.00. There is no dispute that the Tenants failed to pay rent in January, February, March, and April of 2009. I therefore find that the Tenants owe the Landlord \$5,600.00 in unpaid rent.

Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent to their landlord. If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on April 07, 2009, in accordance with section 89 of the *Act*. On this basis I will grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants.

Section 7(1)(d) of the *Residential Tenancy Regulation (Regulation)* stipulates that a landlord can charge a fee of not more than \$25.00 when a cheque is returned by a financial institution. Section 7(2) of the *Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

This tenancy agreement provides for a \$30.00 fee for returned cheques, which is not authorized by the *Regulation*. I find that condition of the tenancy agreement regarding returned cheque fees does not comply with the legislation, and therefore I dismiss the Landlord's application for a monetary Order for the returned cheque. To be enforceable, the tenancy agreement must stipulate that the Tenant agrees to a fee of \$25.00 or less.



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I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution. I decline to award the Landlord additional administrative costs, in the amount of \$208.44, as I do not have jurisdiction to make such an award.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, 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 \$5,700.00, which is comprised on \$5,600.00 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$5,700.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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 01, 2009.

Dispute Resolution Officer