



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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, 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 Property Manager stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on July 10, 2009. A tracking number was provided. The Canada Post website shows the mail was delivered on July 13, 2009. These documents are deemed to 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; 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 submitted a tenancy agreement that indicates the Tenant is required to pay monthly rent of \$900.00 on the first day of each month; and that she paid a security deposit of \$450.00 on September 30, 2008.

The Property Manager stated that she posted a ten (10) day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 04, 2009, on the door of the rental unit on June 24, 2009. The Notice declared that the Tenant owed \$925.00 in rent that was due on June 01, 2009. The Notice indicated that the Tenant is presumed to have

accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Property Manager stated that on July 03, 2009 the Tenant paid the \$925.00 that was due on June 01, 2009, which represented rent for June of 2009 and the late fee from June of 2009. She stated that no rent has been paid for July and August, and she is seeking compensation in the amount of \$1,800.00 for unpaid rent for those months.

The Property Manager is also seeking compensation, in the amount of \$50.00, because the Tenant did not pay rent when it was due on July 01, 2009 or August 01, 2009. The Landlord submitted a copy of the tenancy agreement, in which the Tenant agreed to pay a late fee of \$25.00 whenever she is late paying rent.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$900.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent for July or August of 2009. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,800.00 in outstanding rent to the Landlord.

I find that the Tenant did agree to pay a late payment fee in the tenancy agreement, as is required by section 7 of the Residential Tenancy Regulation. I therefore find that the Tenant must pay the Landlord \$25.00 for paying the rent late in July and \$25.00 for paying the rent late in August.

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. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on June 24, 2009.

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 June 27, 2009.



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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 June 27, 2009, I find that the earliest effective date of the Notice is July 07, 2009.

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 July 07, 2009.

Section 46(4) 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 to End Tenancy. In the circumstances before me I find that the Tenant did not pay the outstanding rent until six days after she was deemed to have received the Notice and that she did not file an Application for Dispute Resolution. I therefore find that the Tenant accepted that the tenancy ended on July 07, 2009, pursuant to section 46(5) of the *Act*.

As I have ordered the Tenant to pay rent for August of 2009, I hereby grant the Landlord an Order of Possession that is effective on August 31, 2009.

I find that the Landlord's 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 \$451.72, 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 August 31, 2009. 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 \$1,900.00, which is comprised of \$1,800.00 in unpaid rent, \$50.00 in late fees, 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 \$451.72, in partial satisfaction of the monetary claim.



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Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,448.28. 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: August 20, 2009.

Dispute Resolution Officer