



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, 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; 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

These parties agree that the Tenant is required to pay monthly rent of \$250.

The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 12, 2008, was personally served on the Tenant on August 01, 2008. She stated that she attempted to give it to the Tenant at his front door but he refused to take it, so she dropped it inside his residence. The Tenant agreed that the Landlord attempted to give him the Notice to End Tenancy on August 01, 2008 and that she dropped it inside his residence, which he stated he found in his home several days later.

The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the Landlord received \$150.00 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 stated that the Tenant still owes \$150.00 in rent from July of 2008, \$250.00 in rent from August of 2008, and that he has not paid any rent for September.

The Tenant acknowledged that this rent is outstanding. He stated that he had not paid the rent because the Landlords broke his lease and because he was using his rent money to find a new residence.

Analysis

I find that the Tenant was served with the Notice to End Tenancy on August 01, 2008, as both parties acknowledge that the Landlord delivered it on that date. 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 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 will grant the Landlord an Order of Possession that is effective on September 07, 2008.

Based on the statements of both parties, I find that the Tenant has not paid rent in the amount of \$150.00 for July of 2008 and \$250.00 for August of 2008. I find that the Tenant must also pay rent, in the amount of \$58.31, for the seven days in September that he will be occupying the rental unit, at a rate of \$8.33 per day.

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.

Conclusion

The Landlord has been granted an Order of Possession that is effective **at 1:00 p.m. on September 07, 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 \$508.31, which is comprised on \$458.31 in unpaid rent and \$50.00 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 \$508.31. 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: September 04, 2008
