



Dispute Resolution Services

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

Decision

Dispute Codes: MNR OPC

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 Cause and a monetary Order for unpaid rent.

The Landlord 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 November 21, 2008. A copy of the Canada Post receipt, with tracking number, was submitted as evidence. The Canada Post website shows the mail was not picked up by the recipient. 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 and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that this tenancy began on June 01, 2008; that the Tenant appears to still be occupying the rental unit; and that the Tenant is required to pay monthly rent in the amount of \$650.00.

The Landlord stated that a One Month Notice to End Tenancy for Cause, which had an effective date of November 12, 2008, was personally served on the Tenant on October 13, 2008. 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 by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within ten days.

The Landlord stated that the Tenant still owes \$650.00.00 in rent from October of 2008 and \$650.00 in rent from November of 2008. The Landlord stated that she would like to end this tenancy as early as possible, and that she would like to be compensated for loss of revenue for December.

Analysis

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant is deemed to have received this Notice on October 13, 2008, and rent is due on the first of each month, the earliest effective date that the Notice is November 30, 2008.

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 November 30, 2008.

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that ends this tenancy on November 30, 2008, pursuant to section 47 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 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 two days after it is served upon the Tenant.

I find that the Tenant did not comply with the *Act* when she did not vacate the rental unit on November 30, 2008. I find that the Tenant's actions prevented the Landlord from finding new tenants for December 01, 2008, as the Landlord did not have a reasonable expectation that the rental unit would be vacated by that date. I find that the Landlord is therefore entitled to compensation for loss of revenue from December 01, 2008 to December 14, 2008, in the amount of \$325.00. I dismiss the Landlord's application for compensation for loss of revenue from December 15, 2008 to December 31, 2008, with leave to reapply on this single issue, if the Landlord is unable to rent the unit for December 15, 2008.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$650.00 for October of 2008 and \$650.00 for November of 2008, and I find that the Landlord is entitled to compensation in the amount of \$1,300.00.

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.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon 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 \$1,675.00, which is comprised on \$1,300.00 in unpaid rent, \$325.00 as compensation for loss of revenue, 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 \$1,675.00. 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: December 04, 2008