



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPC, 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, an Order of Possession for Cause, 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.

Landlord #2 stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the Tenant by Landlord #1 on June 22, 2009, in the presence of Landlord #1. I find that 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 an Order of Possession for Cause; 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

At the hearing Landlord #1 stated that this tenancy began on August 03, 2008; that the Tenant is required to pay monthly rent of \$380.00 on the first day of each month; and that the Tenant paid a security deposit of \$190.00 on August 03, 2008.

At the hearing Landlord #1 stated that on May 18, 2009 the Landlord #2 personally served the Tenant with a One Month Notice to End Tenancy for Cause, which had an effective date of June 30, 2009. Landlord #1 stated that she wrote a note on the bottom of the Notice indicating that the Notice was to be received by the housemate before Landlord #2 served the Notice, as she anticipated that the Tenant would not be at home. She stated that the Landlord #1 was able to serve the Tenant on May 18,

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2009, as he was at home when Landlord #2 initiated service. Landlord #1 stated that Landlord #2 does not communicate well in English and she inadvertently had the roommate sign the Notice beside the notation made by Landlord #1.

The One Month Notice to End Tenancy for Cause declared 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 files an Application for Dispute Resolution within ten days after the date they are deemed to have received the Notice.

The Landlord #1 stated that the Tenant is still occupying the rental unit and that he currently owes \$380.00 in rent from June of 2009 and \$380.00 in rent from July of 2009.

The Landlord #1 stated that on June 01, 2009 the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 11, 2009.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord and that the Tenant is currently required to pay monthly rent of \$380.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a One Month Notice to End Tenancy for Cause, which had an effective date of June 30, 2009, was personally served on the Tenant on May 18, 2009. Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Notice to End Tenancy, I find that the Tenant accepted that the tenancy was ending on June 30, 2009, pursuant to section 47(5) of the *Act*.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant is still occupying the rental unit. I therefore find that the Landlord is entitled to an Order of Possession.

As this tenancy has ended on the basis of the One Month Notice to End Tenancy for Cause, I find that there is no reason to consider the Landlord's application for an Order of Possession for Unpaid Rent. This portion of the Landlord's Application for Dispute Resolution is therefore being dismissed without further consideration.



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Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant still owes rent in the amount of \$760.00 from June and July of 2009. I find that the Tenant is obligated to pay this rent, pursuant to section 26 of the *Act*.

I find that the Landlords' application has merit, and I find that the Landlords are 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 \$191.18, in partial satisfaction of the monetary claim.

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 \$810.00, which is comprised of \$760.00 in unpaid rent 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 \$191.18, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$618.82. 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: July 30, 2009.

Dispute Resolution Officer