



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, 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, a monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on July 13, 2009 each tenant was personally a copy of the notice of hearing and application for dispute resolution at the rental unit.

Preliminary Matter

The applicant's mother was dialed into the conference call as a witness to service of the 10 Day Notice issued on June 30, 2009. At that time the tenants were present at the landlord's home and were provided with the opportunity to participate in the hearing. The tenant provided affirmed testimony that he did not have access to a telephone and had not attempted to dial into the conference call hearing. I then explained to the male tenant the testimony I had received in relation to service of the notice of hearing and the 10 Day Notice; both of the which the tenant confirmed.

At approximately 9:12 a.m. the female tenant was provided an opportunity to participate in the conference call. The details of service of the notice to end tenancy were confirmed and the tenant proceeded to provide affirmed testimony.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in November 2006 and during the hearing the parties agreed that rent is \$1,000.00 per month due on the first day of each month.

During the hearing the parties agreed that on June 30, 2009 the tenants received a 10 Day Notice to End Tenancy for Unpaid Rent, which had an effective date of July 10, 2009. The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$998.00 within five days of service. The Notice also indicated that the tenants are 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 file an Application for Dispute Resolution within five days.

The female tenant testified that that since June 1, 2009 they have paid:

- June 26 \$200.00
- July 31 \$100.00
- August 15 \$420.00

According to the Notice issued on June 30, 2009, the tenants owed \$998.00 that was due on June 1, 2009. The landlord testified that outside of the \$720.00 paid since June 26 there have not been any additional payments made.

The female tenant testified that she understood that rent was owed and payment is due on the first of each month.

Analysis

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 tenants are deemed to have received this Notice on **June 30, 2009** I find that the earliest effective date of the Notice is July 10, 2009.

I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on July 10, 2009, pursuant to section 46 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 tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the tenants accepted that the tenancy has ended. On this basis I



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will grant the Landlord an Order of Possession that is effective **two days after it is served upon the tenants.**

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$2,278.00 for June, July and August, 2009 and that the landlord is entitled to compensation in that amount.

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.

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 **\$2,328.00**, which is comprised of \$2,278.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount. 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: August 28, 2009.

Dispute Resolution Officer