



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, 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, 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 landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were posted to the door of the rental unit on September 15, 2009. The landlord initially applied for dispute resolution via Direct Request Proceeding and a decision with a Notice of Hearing was sent to the landlord by mail, with instructions that the tenant be served with the Notice of Hearing documents. The landlord is deemed to have received the Direct Request Decision and Notice of Hearing on September 14, 2009.

The landlord testified that on September 15, 2009 she posted the Notice of Hearing to the door of the tenant's rental unit. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the tenant did not appear at the hearing.

Preliminary Matter

At the start of the hearing the landlord witness was asked to leave the room until she was required by the landlord. Due to communication difficulties it was determined that the witness would act as an interpreter for the landlord. This witness also provided testimony and appropriate weight was given to that testimony.

As the tenant has been served with Notice of this hearing via posting to the door I have determined that only the portion of the Application for Dispute Resolution requesting an Order of possession may proceed. An Application for Dispute Resolution requesting a monetary Order must be served according to section 89(1) of the *Act*; either in person, by registered mail or as Ordered by the Director.

Issue(s) to be Decided

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

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$850.00 by the first day of the month. The tenant paid a security deposit of \$425.00 on January 5, 2009.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 27, 2009, was served by the landlord on August 17, 2009 via posting to the door of the rental unit. The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$850.00 within five days of service. 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 paid August and September rent on September 10, 2009 at which time he was told that she wanted him to move out. The landlord's witness stated she was present when the tenant paid the rent on September 10 and that the landlord told the tenant he must still move out. The witness stated that the landlord also completed a receipt indicating that the rent payment was accepted for use and occupancy only, but the tenant refused to accept the receipt. The landlord stated that when she gave the tenant the receipt he threw it at her. The landlord testified that the tenant also paid October rent late and was told that he must move out. The landlord stated the tenant refused to take the October receipt which indicated use and occupancy only.

Analysis

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 August 20, 2009.

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 August 20, 2009 I find that the earliest effective date of the Notice is August 30, 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 August 30, 2009.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on August 30, 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. The tenant has paid his August and September rent in full, after the effective date of the Notice, at which point the landlord stated she told the tenant that payment was for use and occupancy only. The landlord also accepted October rent and again told the tenant the payment was for use and occupancy only.

In the absence of testimony from the tenant, I have accepted the landlord's testimony that she stated her intent when accepting the rent payments. I also accept the landlord's testimony that she issued receipts for use and occupancy only, which the tenant refused to accept. 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 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 \$50.00 which is comprised of compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. As provided by section 72(2) of the *Act*, the landlord may retain \$50.00 from the deposit paid by the tenant. The balance of the deposit paid continues to be held in trust by the landlord and must be disbursed as determined by section 38 of the *Act*.



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As the tenant was not served with Notice of this hearing for the purposes of a monetary claim; that portion of the Application is dismissed with leave to reapply. However, the amount claimed by the landlord on this Application for Dispute Resolution has been paid by the tenant.

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: October 26, 2009.

Dispute Resolution Officer