



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

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, 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 female Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the Tenant with the initials "MM" at the rental unit on October 29, 2009. The female Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing for the Tenant with the initials "KM" were also given to the Tenant with the initials "MM" on October 29, 2009, at which time she was asked to give these documents to the Tenant with the initials "KM".

Section 89 of the *Act* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 89(1). In this case only one of the two Tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the Tenant who has been properly served with Notice of this Proceeding. As the Tenant with the initials "KM" has not been properly served the Application for Dispute Resolution as required by section 89(1) of the *Act*, the monetary claim against her is dismissed without leave to reapply.

The Landlord has requested an Order of possession against both Tenants. Section 89(2) of the *Act* determines that the Landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of possession at the Tenants' residence with an adult who apparently resides with the tenant. I find that both Tenants have been sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the *Act*.

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; 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

The female Landlord stated that the Landlord entered into a written tenancy agreement with the Tenant with the initials "MM" and another individual; that this tenancy began on May 01, 2005; and that these Tenants paid a security deposit of \$400.00 on April 30, 2005. She stated that the other individual vacated the rental unit and that she returned \$160.00 of the security deposit to that individual on August 31, 2009.

She stated that she has never met the Tenant with the initials "KM"; that they have only spoken on the phone; that she understood that the Tenant was moving into the rental unit sometime in October of 2009; and that the Ministry of Income and Employment Assistance paid a security deposit on behalf of this Tenant, in the amount of \$161.00, on October 30, 2009. She stated that the Tenants with the initials "MM" and "KM" were jointly required to pay monthly rent of \$795.00 on the thirty-first day of each month.

The female Landlord stated that by October 27, 2009 the Tenant with the initials "MM" had not paid \$27.00 of the rent that was due for September of 2009 and neither Tenant had paid the rent of \$795.00 that was due for October 01, 2009. She stated that the Landlord received a payment of \$274.00 for rent on October 30, 2009 and \$265.00 for rent a few days prior to that, leaving arrears in the amount of \$283.00. She stated that she has clearly told the Tenant with the initials "MM" that this tenancy would end in spite of the payments that had been made.

The female Landlord stated that two cheques, in the amount of \$525.54 and \$548.00, were placed in their mail slot on November 12, 2009. She stated that this amount has been applied to the outstanding debt of \$283.00 plus the rent from November, leaving an outstanding balance of \$4.46. She stated that she has not yet spoken with the Tenants so she has not had the opportunity to advise them that the rent payment does not reinstate the tenancy.

The Landlord stated that she personally served a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 10, 2009, to the Tenant with the initials “MM” on October 01, 2009. The Notice declared that the Tenants owed \$822.00 in rent that was due on September 30, 2009. 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 unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord that requires the Tenants to pay monthly rent of \$795.00 on the thirty-first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant with the initials of “MM” did not pay rent of \$27.00 when it was due on August 31, 2009; rent of \$795.00 when it was due on September 30, 2009; and that neither Tenant paid the rent of \$795.00 when it was due on October 31, 2009. Based on the evidence provided by the Landlord, and in the absence of evidence to the contrary I find that the Tenants have now paid all of the rent that was due, with the exception of \$4.46. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant(s) must pay \$4.46 in outstanding rent to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was served to the Tenant with the initials “MM” on October 01, 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 October 01, 2009, I find that the earliest effective date of the Notice is October 11, 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 October 11, 2009.



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Section 46(4) 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 to End Tenancy. 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.

As I have found that the Tenants must pay all the rent for November of 2009, I hereby grant the Landlord an Order of Possession that is effective on November 30, 2009.

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 at 1:00 p.m. on November 30, 2009. 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 \$54.46, which is comprised of \$4.46 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I hereby authorize the Landlord to retain \$54.46 from the security deposit paid in relation to this tenancy.

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: November 16, 2009.

Dispute Resolution Officer