



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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 and damages or loss, 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 provided affirmed testimony that on July 16, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt for each tenant was provided as evidence of service. A copy of the Canada Post tracking information showed that the tenant's adult, live-in nanny received the mail.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenants did not appear at the hearing.

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 and loss of rent revenue?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

A copy of the tenancy agreement signed on September 1, 2009, indicated that the tenancy commenced on September 8, 2009, rent was \$1,750.00 per month, due on the first day of the month. A deposit in the sum of \$875.00 was paid on September 4, 2010.

The landlord stated that on June 30, 2010, at 1:31 p.m. a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of July 10, 2010, was personally served by the landlord to the tenant's adult, live-in nanny.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$950.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants are presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

On June 13, 2010, the tenants paid \$800.00; resulting in a balance owed of \$950.00. On July 23, 2010, the tenants paid \$2,000; resulting in \$700.00 owed. On July 23, 2010, no discussion occurred in relation to the tenancy. The landlord testified that the tenants have been repeatedly late paying rent. The tenants did not pay August rent owed.

The landlord is claiming unpaid rent and loss of revenue in the sum of \$2,450.00.

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 via an adult who resides with them, on June 30, 2010, I find that the effective date of the Notice is July 10, 2010.

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, therefore; pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$2,450.00 for July and August, 2010, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants 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 \$875.00, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to 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 \$2,500.00, which is comprised of \$2,450.00 in unpaid July and August, 2010, 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 \$875.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,575.00. 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 05, 2010.

Dispute Resolution Officer