



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, a monetary Order for money owed or compensation for damage 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 Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each Tenant via registered mail at the service address noted on the Application, on June 17, 2010. The Agent for the Landlord cited a tracking number for each package. The Agent for the Landlord stated that the Canada Post website shows that the Tenant with the initials "S.J." received the package that was sent to him. He stated that the package that was sent to the other Tenant was returned to the sender. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenants 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 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 *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on September 01, 2003; that the Tenants are required to pay monthly rent of \$900.00 on the first day of each month; and that the Tenant paid a security deposit of \$375.00 on August 24, 2003.

The Agent for the Landlord stated that the Tenants did not pay any rent for June, July, or August of 2010 when it was due on the first day of those months.

The Agent for the Landlord stated that he put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 15, 2010, on the door of the rental unit on June 08, 2010. The Notice declared that the Tenants owed \$900.00 in rent that was due on June 01, 2010.

The Agent for the Landlord stated that the Tenants paid \$900.00 in rent on June 25, 2010, for which they were given a receipt that stated the rent was being accepted for "use and occupancy only". He stated they have not paid rent since that time.

Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord that requires the Tenants to pay monthly rent of \$900.00 on the 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 Tenants did not pay rent for July, or August of. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$1,800.00 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. In the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy was posted on the Tenants' door on June 08, 2010, which declared the Tenants must vacate the rental unit by June 15, 2010, pursuant to section 46 of the *Act*.

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 June 11, 2010.

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 June 11, 2010, I find that the earliest effective date of the Notice was June 21, 2010.

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 June 21, 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 and, 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 two days after the order is served upon the Tenant.

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.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. 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 \$1,850.00, which is comprised of \$1,800.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I hereby authorize the Landlord to retain the Tenants' security deposit plus interest, in the amount of \$388.28, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,461.72. 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 10, 2010.

Dispute Resolution Officer