



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNDC, 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 and 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 provided affirmed testimony that on July 7, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the female tenant via registered mail at the address noted on the Application. A Canada Post tracking number and copy of the receipt was provided as evidence of service.

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

The male tenant has not been present at the rental unit for some time, although he remains on the tenancy agreement. The male tenant was served a copy of the documents, enclosed with the registered mail sent to the female tenant. Residential Tenancy Rules of Procedure require that each respondent be served with Notice of a hearing; therefore, as the male tenant was not served, I find that the claim against the male tenant is dismissed and that the landlord may proceed against the female tenant only; as she was served by registered mail effective July 12, 2010.

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?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2009, rent was \$1,100.00 due on the first day of each month. The landlord testified that the tenants were given proper 3 months Notice increasing the rent to \$1,135.20 effective August 1, 2010.

A deposit in the sum of \$550.00 was paid on July 30, 2009.

The male tenant moved out of the rental unit several months after the tenancy commenced, but the tenants did not approach the landlord to have that individual removed from the tenancy agreement. Therefore, the landlord named both tenants as respondents.

The landlord stated that on June 8, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of June 21, 2010, was served by posting to the door of the rental unit. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,525.00 within five days after the tenants are 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.

The tenants were in arrears as follows:

- May 2010-08-27 \$400.00
- June 1,100.00
- July 200.00; and
- August 1,135.20.

The total arrears are \$2,835.20. The tenants made a payment of \$900.00 on July 5, 2010; a copy of a use and occupancy only receipt was provided as evidence.

The landlord requested a \$25.00 NSF fee as the May rent cheque was returned by the bank. A copy of the tenancy was not provided as evidence.

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 tenants received the Notice to End Tenancy on June 11, 2010.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on June 21, 2010, 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, 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, as requested by the landlord, August 31, 2010, at 1 p.m.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$2,835.20 for May to August 2010, rent owed, and that the landlord is entitled to compensation in that amount.

Based on the affirmed testimony of the landlord I find that the landlord is entitled to a \$25.00 NSF fee for May, 2010.

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, in the amount of \$550.00, 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 \$2,910.20, which is comprised of \$2,835.20 in unpaid May to August, 2010, rent inclusive, the \$25.00 late fee 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, in the amount of \$550.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,360.20. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As the male tenant was not served with Notice of this hearing, a monetary Order has been issued naming the female tenant only. The monetary claim against the male tenant is dismissed.

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 27, 2010.
