



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR

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 and a monetary Order for unpaid rent.

The agent for the landlord provided affirmed testimony that on August 26, 2010, copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service. The landlord stated that the Canada Post web site indicated that the tenant had not picked up the mail.

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

The Application was amended to include unpaid rent for September, 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 for unpaid rent?

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent subsidized rent of \$205.00 due on or before the first day of each month. The tenancy commenced on October 1, 2008 and in 2009 the tenant provided her income and asset information that is required in order to maintain her rent subsidy.

The rental unit is one of twenty-five subsidized family housing units managed by the landlord.

On May 31, 2010, the landlord sent the tenant a letter by regular mail informing her that proof of income was required and copies of the 2009 tax return needed to be submitted. This letter was sent after numerous notes had been left for the tenant reminding her of

the need to provide the information. On August 10, 2010, the landlord sent the tenant another letter informing her that effective June 1, 2010, she had lost her subsidy and rent, from June 1 onward was \$798.00 per month. The tenant was informed that she was in arrears in the sum of \$1,768.00.

The landlord provided a copy of a June 11, 2010, BC Housing Management Commission document that indicated the tenant was the only person of the 25 units who had not supplied her information, thus preventing the landlord from submitting the application for subsidy.

The tenant had told the landlord she would be in Japan for several weeks and that a friend would look after her unit while she was gone.

The tenant overpaid May rent by \$49.00 and this was applied to June rent owed. The person who has been living in the tenant's unit has made 4 payments via money order; on August 6 and 9 in the sum totalling \$350.00 and another 2 orders placed under the landlord's door on September 8, 2010, totalling \$350.00.

The landlord has talked with the individual who has been staying in the tenant's rental unit and told him that she cannot communicate with him in relation to the tenancy as he is not her tenant. On August 9, 2010, the landlord issued a 1 Month Notice Ending Tenancy for Cause as the tenant has sublet the unit without permission of the landlord.

The landlord stated that on August 10, 2010 a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 20, 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 \$1,768.00 within five days after the tenant is assumed to have received the Notice. 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 filed an Application for Dispute Resolution within five days.

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 13, 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 August 13, 2010, I find that the earliest effective date of the Notice is August 23, 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 August 23, 2010.

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 23, 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 tenant exercised either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenant 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 tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,443.00 for June to September, 2010, and that the landlord is entitled to compensation in that amount.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to 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 \$2,443.00, which is comprised of unpaid rent from June to September, 2010, inclusive.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,443.00. 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.

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: September 09, 2010.

Dispute Resolution Officer