



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 agent for the landlord provided affirmed testimony that on July 22, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered courier service at the address noted on the Application. A copy of the receipt was provided as evidence showing that the female named as a respondent signed, acknowledging receipt of the documents. On July 22, 2010, at 9:05 a.m. the landlord's agent also personally served the female tenant with the Notice of hearing documents, at the rental unit address.

The male respondent has not been sufficiently served for the purposes of a monetary claim for compensation; however I find that he has been served via an adult who resides with him, for the purposes of the portion of the Application requesting an order of possession. Therefore, the monetary claim against the male tenant was dismissed.

These documents are deemed to have been served to the female tenant 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 a claim for unpaid September, 2010, rent owed.

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 tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on April 1, 2010, rent is \$1,450.00 per month due on the first day of the month. A deposit in the sum of \$725.00 was paid on April 1, 2010.

The landlord stated that on July 5, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of July 15, 2010, was personally served to the female tenant in the evening of July 6, 2010, at the rental unit.

The Notice, on a Residential Tenancy Branch form issued in 2004, indicated that the Notice would be automatically cancelled if the landlord received rent arrears in the sum of \$1,450.00 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.

Since July the tenant has paid \$500.00 in rent owed. The tenant currently owes the landlord \$3,850.00 for rent from July to September, 2010, inclusive. The landlord stated the tenant is well aware that they were proceeding with this hearing and that she owed rent.

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 tenant is deemed to have received this Notice on July 6, 2010, I find that the earliest effective date of the Notice is July 16, 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 July 16, 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 July 16, 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.

The landlord has used a form that is not currently in use, but I find that the Notice included all of the required content, as determined by section 52 of the Act. The form also referenced the correct sections of the Act.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$3,850.00 from July to September, 2010, inclusive, 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 tenant 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 \$725.00, 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 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 \$3,900.00, which is comprised of \$3,850.00 in unpaid July to September 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 \$725.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$3,175.00. 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.

The monetary claim against the male responded 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: September 10, 2010.

Dispute Resolution Officer