



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 initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as the Dispute Resolution Officer at the Direct Request Proceeding had insufficient evidence to determine that the parties had entered into a tenancy agreement for this particular rental unit.

The reconvened hearing was held to address 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 Landlord applied for unpaid rent for July of 2010, in the amount of \$815.00.

The Agent for the Landlord stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant at the rental unit. He stated that he is not certain of the date of service as he is out of town and his luggage was lost, in which he has documentation related to this proceeding. He is certain that he served the aforementioned documents on the Tenant shortly after he received the Notice of Hearing, which was generated on July 27, 2010. In the absence of evidence to the contrary I accept that these documents were personally served to the Tenant, however the Tenant did not appear at the hearing. The hearing proceeded in the absence of the Tenant.

At the hearing the Agent for the Landlord applied to amend the application to remove the application for unpaid rent from July and to include an application for unpaid rent from August and September of 2010. As the Tenant knows, or should know, that he is obligated to pay rent I find that it does not unduly prejudice the Tenant to amend the application to include a claim for unpaid rent from August and September of 2010. The Landlord's Application for Dispute Resolution has been amended accordingly.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Office Manager stated that the Tenant resided in a different rental unit prior to moving into this rental unit in the same residential complex; that they had a written tenancy agreement for the other rental unit; that the Tenant moved into this rental unit on January 01, 2007; and that the Tenant agreed to pay monthly rent of \$815.00 for this rental unit on the first day of each month.

The Apartment Manager stated that the Tenant did not pay his rent for July when it was due on July 01, 2010 and that he did not pay that rent, in full, until July 23, 2010. She stated that he was issued a rent receipt for July of 2010 which declared that the rent was being accepted for "use and occupancy only". She stated that the Tenant has not paid rent for August or September of 2010.

The Apartment Manager stated that on July 05, 2010 she personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of July 15, 2010. The Notice to End Tenancy, which was submitted in evidence, declares that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent to their 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.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that on July 05, 2010 the Tenant was personally served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on July 15, 2010, pursuant to section 46 of the *Act*.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay the rent that was due on July 01, 2010 until July 23, 2010.

Section 46(4) 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 to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary I find that the Tenant has not paid rent, in the amount of \$1,630.00, from August and September of 2010.

Conclusion

As I have determined that the Tenant must pay rent until September 30, 2010, I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on September 30, 2010. 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 \$1,630.00, for unpaid rent and I grant the Landlord a monetary Order for that amount. 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 15, 2010.

Dispute Resolution Officer