



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This hearing was convened 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, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution. At the hearing the male Agent for the Landlord withdrew the application for compensation for loss of revenue from September and October of 2010.

The male Agent for the Landlord stated that he personally served each Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on August 12, 2010. In 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; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The female Agent for the Landlord stated that this tenancy began on November 15, 2006 and that the Tenants were required to pay monthly rent of \$800.00 on the first day of each month.

The female Agent for the Landlord stated that the Tenants only paid \$500.00 in rent for January of 2009 and that they have not paid rent since that time. She stated that they vacated the rental unit on August of 2010.

The male Agent for the Landlord stated that on August 04, 2010 he personally served a copy of a Ten Day Notice to End Tenancy for Unpaid Rent to each Tenant at the rental unit. The Notice to End Tenancy, which was submitted in evidence, had no declared effective date. The Notice declared that the Tenants owed \$15,500.00 in rent that was due on August 01, 2010.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$800.00 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 still owe \$300.00 in rent for January of 2009. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants have not paid rent for the period between February 01, 2009 and August 18, 2010, and that they therefore owe rent of \$15,200.00 for this period. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$15,500.00 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. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants were served with a Notice to End Tenancy on August 04, 2010, although the Notice does not advise them of the date they are to vacate the rental unit.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(c) of the *Act* stipulates that to be effective a notice to end tenancy must state the effective date of the Notice. As the Notice to End Tenancy that was served to the Tenants on August 04, 2010 does not declare the effective date of the Notice, I find that the Notice is of no force or effect, as it does not comply with section 52(c) of the *Act*.

Section 53(2) 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. I find that this section only applies when the effective date is stated incorrectly on the Notice to End Tenancy and does not serve to exempt a landlord from complying with section 52(c) of the *Act*.

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

As I have determined that the Notice to End Tenancy that was served on the Tenants is of no force or effect, I dismiss the Landlord's application for an Order of Possession.

I find that the Landlord has established a monetary claim, in the amount of \$15,550.00, which is comprised of \$15,500.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for this amount. 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: September 28, 2010.

Dispute Resolution Officer