



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, OPB, MNR, ET, FF

Introduction

This hearing was convened in response to two Applications for Dispute Resolution that have been filed by the Landlord.

The Landlord filed an on-line Application for Dispute Resolution on August 08, 2010, in which he made application for an early end to tenancy and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. The Landlord stated that he did not serve this Application for Dispute Resolution on the Tenant. As this Application for Dispute Resolution has not been served on the Tenant, I dismiss this Application for Dispute Resolution, with leave to reapply.

The Landlord filed an on-line Application for Dispute Resolution on September 03, 2010, in which he made application for a monetary Order in the amount of \$425.00; an Order of Possession; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. The Landlord amended this Application for Dispute Resolution on September 21, 2010, at which time he increased his monetary claim to \$850.00.

The Landlord stated that he personally served the Tenant with copies of the amended Application for Dispute Resolution and Notice of Hearing on September 21, 2010 and that he set these documents to the Tenant via registered mail at the service address noted on the Application, on September 21, 2010. The Landlord cited a Canada Post tracking number to corroborate this statement. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant 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; to a monetary Order for unpaid rent;; and to recover the filing fee from the Tenant 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 Landlord stated that the Tenant moved into the rental unit on August 04, 2010 but was not required to pay rent until August 15, 2010, and that the Tenant was required to pay monthly rent of \$850.00 on August 15, 2010. The Landlord stated that the Tenant has not paid any rent and he is seeking compensation for unpaid rent between the period of August 15, 2010 and September 15, 2010.

The Landlord stated that on September 08, 2010 he put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of September 18, 2010, on the door of the rental unit. The Notice declared that the Tenant owed \$850.00 in rent that was due on August 15, 2010.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$850.00 on the fifteenth 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 Tenant did not pay rent that was due on August 15, 2010. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$850.00 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. In the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy that declared the Tenant must vacate the rental unit on September 18, 2010 was posted on the door of the rental unit on September 08, 2010, pursuant to section 46 of the *Act*.

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 September 11, 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 September 11, 2010, I find that the earliest effective date of the Notice is September 21, 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 September 21, 2010.

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 and, 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 two days after the order is served upon the Tenant.

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.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon 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 \$900.00, which is comprised of \$850.00 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 the amount of \$900.00. 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 29, 2010.

Dispute Resolution Officer