



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, OPR, MNR, MNDS, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an 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; 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 Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the female Tenant via registered mail at the service address noted on the Application, on October 08, 2010. The Landlord cited a tracking number to corroborate this statement. In the absence of evidence to the contrary, I find that these documents have been served to the female Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the female Tenant did not appear at the hearing.

The Landlord and the male Tenant attended the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issue to be decided in relation to the Tenant's Application for Dispute Resolution is whether the Notice to End Tenancy for Unpaid Rent should be set aside, pursuant to section 46(4) of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 01, 2005; that the Tenant has been required to pay monthly rent of \$1,470.00 since March 01, 2010; that rent is due on the first day of each month; and that the Tenant paid a security deposit of \$637.50 on, or about, January 11, 2005.

The Landlord and the Tenant agree that that the Tenant did not pay any rent for September, October or November of 2010. The Tenant stated that he has not paid rent due to personal financial reasons.

The Landlord and the Tenant agree that the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 12, 2010, on October 02, 2010. The Notice declared that the Tenant owed \$2,940.00 in rent that was due on October 01, 2010.

The Landlord is seeking an Order of Possession for November 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 \$1,470.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the undisputed evidence provided at the hearing, I find that the Tenant has not paid rent for September and October of 2010 and that the Tenant occupied the rental unit in September and October. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,940.00 in outstanding rent for those months.

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. The undisputed evidence is that the Tenant was personally served with a Ten Day Notice for Unpaid Rent on October 02, 2010. I find that this was appropriate notice and I therefore find that the Landlord has the right to end this tenancy for unpaid rent, pursuant to section 46 of the *Act*.

On this basis I dismiss the Tenant's application to set aside the Notice to End tenancy and I grant the Landlord's request for an Order of Possession. The Landlord agreed that the effective date of the Order of Possession shall be November 15, 2010.

Based on the undisputed evidence provided at the hearing, I find that the Tenant has not paid rent for November of 2010. As the Tenant is required to pay rent for the period in which the rental unit is occupied and I am issuing an Order of Possession that is effective on November 15, 2010, I find that the Tenant must pay rent of \$735.00 for the period between November 01, 2010 and November 15, 2010.

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 \$22.55, in partial satisfaction of the monetary claim, pursuant to section 72(2) of the *Act*.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on November 15, 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 \$3,725.00, which is comprised of \$3,675.00 in unpaid 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 \$660.05, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,064.95. 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: November 04, 2010.

Dispute Resolution Officer