



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 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, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the service address noted on the Application, on November 09, 2010. Canada Post documentation was submitted in evidence that corroborates this statement. In the absence of evidence to the contrary, I accept that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

The Landlord presented oral evidence via the interpreter.

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; to a monetary Order for loss of revenue; 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 this tenancy began on May 01, 2010; that the Tenant is required to pay monthly rent of \$450.00; that the Tenant was originally required to pay rent on the first day of each month although they subsequently reached an agreement that he could pay rent on the fifteenth day of each month; and that the Tenant is still occupying the rental unit.

The Landlord stated that the Tenant has not paid rent for most of this tenancy and that the Landlord has previously been awarded a monetary Order for unpaid rent for periods

prior to October 31, 2010. The Landlord submitted a copy of a decision from a Dispute Resolution Proceeding, dated October 19, 2010, which corroborates this statement.

The Landlord stated that the Tenant has not paid rent for November or December of 2010, for which the Landlord is seeking compensation in the amount of \$900.00.

The Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 31, 2010, on the door of the rental unit on October 22, 2010. The Notice declared that the Tenant owed \$2,250.00.00 in rent that was due on October 31, 2010. This is the amount of overdue rent that a previous Dispute Resolution Officer determined was due for unpaid rent, which the Landlord stated remains paid. The Landlord submitted a photograph of the Landlord posting the Notice to End Tenancy.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$450.00 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 had not paid rent November of 2010 when it was due on November 15, 2010. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$450.00 in outstanding rent to the Landlord for rent from November of 2010. As the Tenant is not required to pay rent for December until December 15, 2010, I dismiss the Landlord's claim for a monetary Order for rent for December, as that rent is not yet due.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not yet paid outstanding rent in the amount of \$2,250.00 that was due on October 15, 2010.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if appropriate notice is given to the tenant. In the absence of evidence to the contrary, I find that the Landlord posted a Ten Day Notice to End Tenancy on October 22, 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 is deemed to have received the Notice to End Tenancy on October 25, 2010.

Section 46(1) of the *Act* stipulates that a Ten 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 October 25, 2010, I find that the earliest effective date of the Notice is November 04, 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 November 04, 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 paid the outstanding rent in the amount of \$2,250.00 that was due on October 15, 2010 or that he disputed the Notice to End Tenancy. I therefore find, pursuant to section 46(5) of the *Act*, that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

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 \$500.00, which is comprised of \$450.00 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 \$500.00. 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: November 30, 2010.

Dispute Resolution Officer