



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, 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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for 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 17, 2010. Canada Post documentation was submitted in evidence that corroborates this statement. In the absence of evidence to the contrary, I find 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.

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 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 submitted a tenancy agreement that indicates this tenancy began on October 01, 2010 and that the Tenant is required to pay monthly rent of \$575.00 on the first day of each month. The Agent for the Landlord stated that the Tenant had a previous tenancy with the Landlord for a different unit in the same residential complex in September of 2010.

The Agent for the Landlord stated that the Tenant still owed rent of \$195.00 from the previous tenancy and that she paid no rent for this tenancy for November and December of 2010. The Agent stated that the Application for Dispute Resolution indicated that the Tenant owed \$195.00 from October of 2010, which was an error. He

stated that she had paid all of her rent for October and the \$195.00 was rental arrears from her previous tenancy.

The Agent for the Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of November 12, 2010, on the door of the rental unit on November 02, 2010. The Notice declared that the Tenant owed \$575.00 in rent that was due on November 01, 2010.

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 \$575.00 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 Tenant did not pay rent for this tenancy in November and December of 2010. As the Tenant is required to pay rent, I find that the Tenant must pay \$1,150.00 in outstanding rent to the Landlord.

I find that that I cannot award the Landlord compensation for unpaid rent from a different rental address, as the Tenant has not been properly advised that the dispute relates to her previous tenancy. On this basis, I dismiss the Landlord's application for unpaid rent from September of 2010, with leave to reapply on that specific issue.

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 a Ten Day Notice to End Tenancy was posted at the rental unit on November 02, 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 November 05, 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 November 05, 2010, I find that the earliest effective date of the Notice is November 15, 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 15, 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 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 \$1,200.00, which is comprised of \$1,150.00 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 \$1,200.00. 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: December 15, 2010.

Dispute Resolution Officer