



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 Respondent 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 male Respondent via registered mail at the rental unit on January 12, 2011. The Agent for the Landlord cited a Canada Post tracking number which corroborates this statement. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the male Respondent did not appear at the hearing.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the female Respondent via registered mail at the rental unit on January 12, 2011. The Agent for the Landlord cited a Canada Post tracking number which corroborates this statement. The Agent for the Landlord stated that he believes the female moved out of the rental unit shortly after this tenancy began and that she is not currently residing there.

The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 89(1) of the *Act*. As the Landlord sent the Application for Dispute Resolution and Notice of Hearing to an address at which the female Respondent is no longer residing, I find that she was not served in accordance with section 89(1)(c) of the *Act*. There is no evidence to show that these documents were served in accordance with 89(1)(a), 89(1)(b), 89(1)(d), or 89(1)(e) of the *Act*. Therefore, I find that the request for a monetary Order against both Respondents must be amended to include only the male Respondent who has been properly served with Notice of this Proceeding. As the female Respondent has not been properly served the Application for Dispute Resolution as required by section 89(1) of the *Act* the monetary claim against her is dismissed without leave to reapply.

The Landlord has applied for an Order of Possession which requires that the Landlord serve each respondent as set out under section 89(2) of the *Act*. As the Landlord sent the Application for Dispute Resolution and Notice of Hearing to an address at which the female Respondent is no longer residing, I find that she was not served in accordance with section 89(2)(b) or 89(2)(c) of the *Act*. There is no evidence to show that these documents were served in accordance with 89(2)(a), 89(2)(d), or 89(2)(e) of the *Act*. Therefore, I find that the request for an Order of Possession against both Respondent s must be amended to include only the male Respondent who has been properly served with Notice of this Proceeding. As the female Respondent has not been properly served the Application for Dispute Resolution as required by section 89(2) of the *Act* the request for an Order of Possession naming her is dismissed without leave to reapply.

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 recover rent from the period between July 13, 2010 and July 31, 2010; and to recover the filing fee from the Respondent 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 Agent for the Landlord stated that this tenancy officially began on August 01, 2010, although the Respondents were permitted to move into the rental unit on July 13, 2010.

The Landlord submitted a copy of a tenancy agreement that identifies the female Respondent as the Tenant and the male Respondent as an adult occupant. The tenancy agreement indicates that the tenancy agreement is for a fixed term that will end on July 31, 2011, at which time the tenancy will continue on a month to month basis. The tenancy agreement indicates that the Tenant will pay \$775.00 per month on the first day of each month.

The Agent for the Landlord stated that he believes the female Respondent moved out of the rental unit shortly after the tenancy began, although she did not notify the Landlord that she was vacating.

The Agent for the Landlord stated that the male Respondent continued to pay the rent of \$775.00 per month and that he provided rent receipts in the male Respondent's name.

The Agent for the Landlord stated that no rent has been paid for January of 2011 and that \$765.00 is still owing for December of 2010.

The Landlord is seeking to recover rent for the period between July 13, 2010 and July 31, 2010. The Agent for the Landlord stated that the Tenant was permitted to live in the rental unit for this period without paying rent in exchange for signing a fixed term lease.

The tenancy agreement that was submitted in evidence states that "Tenants will have free rent from July 13, 2010 until July 31, 2010". There is nothing in the agreement that indicates that the free rent is contingent on the signing of the agreement or that indicates the rent must be paid if the Tenant vacates prior to the end of the fixed term of the tenancy.

The Agent for the Landlord stated that he put a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of December 28, 2010, on the door of the rental unit on December 14, 2010. The Notice declared that the Tenant owed \$765.00 in rent that was due on December 01, 2010.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Landlord and the male Respondent entered into a tenancy agreement with the Landlord that required the male Respondent to pay monthly rent of \$775.00 on the first day of each month. In reaching this conclusion, I was strongly influenced by the evidence that shows the male Respondent paid monthly rent of \$775.00 and that he was issued rent receipts, which in my view, implies that both parties understood that there was a tenancy and that the Tenant would pay rent of \$775.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent for January of 2011 and he still owes \$765.00 in rent for December of 2010. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,540.00 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 Notice to End Tenancy was posted at the rental unit on December 14, 2010, pursuant to section 46 of the *Act*.

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.

As there is nothing in the tenancy agreement that indicates that the rent for the period between July 13, 2010 and July 31, 2010 must be paid if the tenancy ends prior to the end of the fixed term of the tenancy or if the Tenant fails to comply with any other term of the tenancy agreement, I dismiss the Landlord's application to recover the unpaid rent from the period between July 13, 2010 and July 31, 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.

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 \$1,590.00, which is comprised of \$1,540.00 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 \$1,590.00. 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: January 26, 2011.

Residential Tenancy Branch