



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes Tenant MNR, ERP, RP, FF
 Landlord OPR, OPB, MNR, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain a Monetary order for the cost of emergency repairs and for repairs to the unit site or property and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by posting the documents on the Tenants door on June 20, 2011 in accordance with section 89 of the Act.

The Tenant said service of the hearing documents by the Tenant to the Landlord were done by registered mail on June 3, 2011, but the Landlord said she did not received the Tenants' application. The Tenant said he did not have a receipt or tracking number available to prove service of his application. I find the Tenant could not proof service of the Tenant's application as required by section 89 of the Act; therefore the application is dismissed with leave to reapply.

The Tenant confirmed that they received the Landlord's hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?



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Background and Evidence

This tenancy started on October 1, 2009 as a month to month tenancy. Rent is \$1,225.00 per month payable in advance of the 1st day of each month. The Tenant did not pay a security deposit of \$600.00 as it was waived by the Landlord for work done on the property.

The Landlord said that the Tenants did not pay \$1,225.00 of rent and \$131.75 in unpaid utilities from previous months, when it was due and as a result, on June 2, 2011 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2011 on the door of the Tenants' rental unit. The effective vacancy date on the Notice is June 15, 2011.

The Landlord further indicated that the Tenant is living at the rental unit and the Tenant said that they would like to continue tenancy until July 31, 2011. The Landlord said she has asked the Tenants for the June, 2011 rent and the Tenants have not paid it. The Tenant said he did not pay the rent because there are repairs to be done to the unit. The Landlord said repairs have been done when the Tenants have requested repairs and the Landlord said she is requesting an Order of Possession as soon as possible if her application is successful.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Tenant said he sent his hearing package to the Landlord by registered mail, but he did not have the receipt or the tracking information for the hearing. The Tenant did not offer to provide the information after the meeting. I explained the service requirements to the Tenant and told him if he could not prove service of the application to the Landlord the application would be dismissed with leave to reapply.

The Tenant said he did not pay the June rent when it was due because there are things in the unit that need to be repaired. The Tenant continued to say that he has secured a new place to live for July 31, 2011 and he said he is not moving out of the rental unit until July 31, 2011.

Analysis

Section 26 of the Act says that a Tenant must pay rent when it is due under the Tenancy agreement, whether or not the landlord complies with this act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The Tenant said he did not paid the June rent or the unpaid utilities and I find the Tenants do not have the right to withhold the June, 2011 rent of \$1,225.00 or the unpaid utilities of \$131.75 therefore; I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect two days after service of the Order on the Tenants.

I also find that the Landlord is entitled to recover unpaid rent for June, 2011, in the amount of \$1,225.00 and unpaid utilities in the amount of \$131.75 and as the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,225.00	
Unpaid Utilities	\$ 131.75	
Recover filing fee	\$ 50.00	
Amount owing:		\$1,406.75

Conclusion

An Order of Possession effective two days after service of the Order on the Tenants and a Monetary Order in the amount of \$1,406.75 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed with leave to reapply.

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*.