



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing. The reconvened hearing was convened to address the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant via registered mail at the rental unit on June 28, 2011. The Landlord submitted a Canada Post receipt that corroborates this statement.

The Agent for 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 rental unit on June 28, 2011. The Landlord submitted a Canada Post receipt that corroborates this statement.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were also posted to the door of the rental unit on June 27, 2011. The Tenant stated that she received the documents that were posted to her door on, or about, June 27, 2011. She stated that she did not receive the documents that were mailed to her as the male Tenant has the keys to the mail box.

I find that the female Tenant received notice of this hearing pursuant to section 71(2)(c) and 89(1)(c) of the *Residential Tenancy Act (Act)*.

The Tenant stated that the male Tenant moved out of the rental unit on, or about, June 10, 2011 although he still has access to the mail box and his vehicle is still at the rental unit. She stated that he is aware of this hearing as she advised him of the hearing on several occasions and she provided him with the access code, via text message.

I find that the male Tenant received notice of this hearing pursuant to section 71(2)(c) of the *Act*. I find that the information provided to him by the female Tenant and his ability to access the mail box for the rental unit is sufficient reason to conclude that he was

aware of these proceedings and could have participated in the proceedings if he wished to do so.

At the hearing the Landlord sought to amend the Application for Dispute Resolution to include rent for June and July of 2011. I find that this amendment does not unduly prejudice the Tenants, as the Tenants knew, or should have known, that they were required to pay rent while they occupied the rental unit. On this basis, I amend the Landlord's Application for Dispute Resolution to include a claim for unpaid rent from June and July.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Act*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on March 01, 2011; that the agreement required the Tenants to pay monthly rent of \$1,950.00 on the first day of each month; that a Ten Day Notice to End Tenancy For Unpaid Rent, which had a declared effective date of May 13, 2011, was personally served to the female Tenant on May 02, 2011; and the rental unit has not yet been vacated.

The female Tenant stated that she believes they will vacate the rental unit by July 15, 2011.

The Agent for the Landlord stated that the Landlord had post dated cheques for May and June of 2011. He stated that when the Landlord attempted to cash those cheques on May 01, 2011 and June 01, 2011 the Landlord learned there were insufficient funds in the account. The Agent for the Landlord stated that the Landlord did not initially cash those cheques due to the information received from the bank and when they were eventually cashed they were returned due to insufficient funds. The Agent for the Landlord stated that no rent was paid for July of 2011.

The Tenant stated that she and other people living in the rental unit paid their portion of the rent to the male Tenant and she believed he had paid the Landlord. She stated that after being served with the Notice to End Tenancy she spoke with the male Tenant who assured her he had since paid the outstanding rent to the Landlord. The Tenant does not dispute the Landlord's evidence that rent was not paid for May, June, or July of 2011.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that rent has not been paid to the Landlord for May, June, or July of 2011. Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due.

As the rent that was due on May 01, 2011 was not paid, I find that the Tenants owe the Landlord \$1,950.00 in rent for May of 2011.

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. On the basis of the undisputed evidence presented at the hearing, I find that the Tenant was served with a Notice to End Tenancy on May 02, 2011, which required the Tenant to vacate the rental unit on May 13, 2011, pursuant to section 46 of the *Act*.

Section 46(4) 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 to End Tenancy. In the circumstances before me I have no evidence that the Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy ended on May 13, 2011. As the rental unit has not yet been vacated, I find that the Landlord is entitled to an Order of Possession that is effective two days after it is served upon the Tenant.

As the Tenants did not vacate the rental unit on May 13, 2011, I find that they are obligated to pay rent, on a per diem basis, for the days they remained in possession of the rental unit. As they have already been ordered to pay rent for the period between May 13, 2011 and May 31, 2011, I find that the Landlord has been duly compensated for May. As the rental unit was occupied by at least one of the Tenant for the entire month of June of 2011, I find that the Tenants must pay \$1,950.00 in rent for that month.

As the Tenant stated that she intends to remain in the rental unit until July 15, 2011, I find that the Tenants must pay \$975.00 in rent for July of 2011. I find that the Tenants fundamentally breached section 46(5) of the *Act* when they did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy.

I decline to award compensation for lost revenue for the period between July 16, 2011 and July 31, 2011, as it is possible that the Landlord will be able to find a new tenant for all, or some, or that period. The Landlord retains the right to seek compensation for loss of revenue if they are unable to re-rent the rental unit in July.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, 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 \$4,925.00, which is comprised of \$4,875.00 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 \$4,925.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: July 12, 2011.

Residential Tenancy Branch