



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for a monetary Order.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

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 keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2006; that the Tenant paid a security deposit of \$500.00; and that the Tenant paid a pet damage deposit of \$500.00.

The Agent for the Landlord stated that the current monthly rent is \$1,070.00 and the male Tenant stated that they have been paying \$1,077.00 per month but he accepts that the rent was actually \$1,070.00.

The Landlord and the Tenant agree that by June 02, 2011 the Tenant had not paid \$1,011.00 in rent that was due on June 01, 2011.

The Landlord and the Tenant agree that on June 03, 2011 the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit, which had a declared effective date of June 13, 2011. The Tenant acknowledged locating the Notice on, or about, June 03, 2011.

The Landlord and the Tenant agree that the Tenant paid \$700.00 in rent on June 15, 2011. The parties agree that the Agent for the Landlord advised the male Tenant that she did not personally wish to end this tenancy but that she has an obligation to the Landlord to ensure that rent was paid when it was due. Although neither party is certain of when they had this conversation, they both believe the conversation occurred on June 15, 2011.

The Landlord and the Tenant agree that the Tenant paid \$415.00 in rent on June 22, 2011; \$800.00 in rent on July 01, 2011; and \$350.00 in rent on July 13, 2011. The parties agree that the Tenant was provided a receipt for all rent payments made in June and July, which clearly inform the Tenant that the rent is being accepted for use and occupancy only.

The Agent for the Landlord stated that the Tenant has paid rent in full for July of 2011 and that the Tenant currently has a credit of \$64.00.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$1,070.00 on the first day of each month and that by June 02, 2011 the Tenant had not paid \$1,011.00 in rent that was due on June 01, 2011.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid some of the outstanding rent from June on June 15, 2011; the remaining outstanding rent from June on June 22, 2011; that the Tenant paid a portion of the rent for July on June 22, 2011; that the Tenant paid a portion of the rent for July on July 01, 2011; and that the Tenant paid the remainder of the rent for July on July 13, 2011.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence presented at the hearing, I find that the Landlord posted a Ten Day Notice to End Tenancy on the door of the rental unit on June 03, 2011 and that the Tenant received that Notice on, or about, that date.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay all of 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.

Although the male Tenant and the Agent for the Landlord agree that she told him that she did not personally wish to end the tenancy, I find that the Landlord made it clear that rent payments made in June and July did not reinstate the tenancy. In reaching this conclusion I was heavily influenced by the undisputed testimony that the Tenant was given receipts which indicated each payment was being accepted for "use and occupancy only".

Conclusion

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on August 31, 2011, which is the date requested by the Agent for the Landlord #2. 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'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. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$50.00 from the Tenant's security deposit, in full satisfaction of this claim.

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 14, 2011.

Residential Tenancy Branch