



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was established that the Landlord's agent served the Tenant with the Notice of Hearing documents by handing the documents to the Tenant at the rental unit on June 15, 2011. The Landlord also provided the Tenant with copies of his documentary evidence at that time.

Issues to be Decided

- Was there a tenancy agreement between the parties?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

The Tenant was employed as resident manager of the rental property on February 2, 2011. The parties signed an agreement, a copy of which was provided in evidence, that states in part that the Tenant would pay monthly rent in the amount of \$500.00 while he was in the employ of the Landlord. Rent was due on the 1st day of each month and was

paid in two equal installments coinciding with the Tenant's paydays, on the 15th and the last day of each month. There was no security deposit required.

The Landlord terminated the Tenant's employment on April 26, 2011. The Landlord agreed that the Tenant could remain in the rental unit until May 31, 2011, at the rent he had been paying while in the Landlord's employ. The Tenant did not pay any rent for the month of May, 2011.

On May 27, 2011, the Landlord issued a Notice to End Tenancy for Unpaid Rent (the "Notice") in the amount of \$500.00. The Landlord posted the Notice on the Tenant's door on May 27, 2011.

The Tenant remains in the rental unit and has not paid any rent for the month of June, 2011. The Landlord's agent testified that market rent for the rental unit is \$1,100.00 and the Landlord seeks loss of revenue for the month of June, 2011 in that amount.

The Tenant gave the following testimony:

The Tenant stated that the Notice was defective because it had the wrong effective end of tenancy date (May 31, 2011), which was not 10 days after he received the Notice.

The Tenant testified that there were bedbugs in the building and that the Landlord has not done anything to get rid of the bedbugs.

The Tenant stated that he has not paid any rent because he was fired without reason and has no money to pay the rent.

The Tenant stated that he has nowhere to go.

Analysis

The agreement provided in evidence is not a tenancy agreement. However, the Act defines a tenancy agreement as:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Based on the testimony of both parties, I find that the parties had an oral tenancy agreement and that the standard terms of a tenancy agreement apply, as outlined in the Residential Tenancy Regulation.

Based on the testimony of both parties, I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on May 27, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. Therefore, pursuant to the provisions of Section 53 of the Act, the effective date of the Notice is deemed to be changed to June 9, 2011. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on June 9, 2011. The Landlord is entitled to an Order of Possession **effective two days after service of the Order upon the Tenant.**

The Landlord's agent testified that market rent for the rental unit is \$1,100.00, however there is no documentary evidence to support that the Tenant agreed to pay increased rent at the end of his employment, or what that rent would be.

Section 26(1) of the Act states:

26 (1) 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 this Act to deduct all or a portion of the rent.

In this case, the Tenant did not have any right under the Act to deduct all or a portion of the rent, for example a previous Order of a Dispute Resolution Officer.

Based on the testimony of both parties, the Landlord's agent has established a monetary claim for unpaid rent and loss of revenue for the months of May and June, 2011, in the total amount of \$1,000.00 (\$500.00 per month).

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

Conclusion

I hereby provide the Landlord an Order of **Possession effective 2 days after service of the Order upon the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of \$1,050.00 for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 04, 2011.

Residential Tenancy Branch