



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on July 28, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and web site tracking information was provided as evidence of service, indicating the tenant signed, accepting the registered mail on August 16, 2011.

These documents are deemed to have been served in accordance with section 89 of the Act; however the Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord provided a copy of the written tenancy agreement signed by the parties on July 17, 2006. Rent was determined as 30% of the tenant's and occupant's gross income based upon asset and income declarations due by the tenant every 12 months. To June, 2011, rent was set at \$200.00 per month.

The landlord provided a copy of the Declaration of Income and Assets form completed by the tenant in July 2010; which expired June 30, 2011. The landlord provided a copy of a June 17, 2011, letter to the tenant informing her that they had not yet received her

2011 Declaration of Income and Assets for the annual review of rent owed effective July 1, 2011. The letter informed the tenant that effective July 1, 2011, her rent would be set at market level of \$1,431.00.

The landlord stated that on June 10, 2011, the landlord's agent personally served a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of June 22, 2011. A copy of the Notice submitted as evidence was signed by the tenant and initialled by the landlord's agent, next to the date the Notice was given to the tenant; June 10, 2011. The agent did not provide testimony in relation to service; nor was a statement of service provided; however, the landlord referenced the notes on the tenant's file to determine the details of service.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$424.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord submitted that the tenant owed \$74.00 in May; \$200.00 in June and \$1,431.00 for each of July and August, 2011. The tenant has paid \$796.00 owed; payment was not made within 5 days of the Notice service date.

Analysis

I find that the landlord is exempt from the provision of the Act in relation to rent increases, as provided by section 2 of the Residential Tenancy Regulation.

In the absence of evidence to the contrary, I find that on June 10, 2011, the tenant was personally served with a Notice to End Tenancy that required the tenant to vacate the rental unit on June 22, 2011, pursuant to section 46 of the Act. The tenant has signed the 10 day Notice submitted as evidence; acknowledging receipt of the Notice and I find that this indicated the tenant had been given a copy of the Notice on the date recorded beneath her signature; June 10, 2011.

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; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. Based on the affirmed testimony of the landlord, I find that the tenant has paid the landlord \$796.00, after June 15, 2011. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

The tenant failed to provide a Declaration of Income and Assets for July 1, 2011, which resulted in the rent converting to market levels. In the absence of evidence to the

contrary, I find that the tenant has not paid rent in the amount of \$2,340.00 owed to August, 2011; inclusive, and that the landlord is entitled to compensation in the amount claimed in the application; \$2,105.41.

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

The landlord has been granted an Order of Possession that is effective 2 days after service to 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 \$2,155.41, which is comprised of unpaid rent for July and August, 2011, 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 in the sum of \$2,155.41. 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: August 26, 2011.

Residential Tenancy Branch