Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service that declares that on July 9, 2011 at 12:45 the landlord served the tenant personally with his Application for Dispute Resolution and the notice of hearing documents. The tenant signed the document acknowledging receipt of the documents.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

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 46, 55, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord testified the tenancy began as a month to month tenancy on November 20, 2008 for the current monthly rent of $1,500.00 due on the 1st of each month and a security deposit and pet damage deposit were paid.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 5, 2011 with an effective vacancy date of July 5, 2011 due to $3,000.00 in unpaid rent.

The landlord testified that despite signing an agreement with the landlord on July 5, 2011 agreeing to vacate the rental unit the tenant is still in the rental unit. The landlord testified that the tenant did call him last night and told him she would be out yesterday. The owner of the rental unit drove by this morning and told the landlord the tenant appeared to still be at the rental unit.

Documentary evidence and testimony filed by the landlord indicates the tenant failed to pay the full rent owed for the months of June, July and August 2011 and that the tenant

was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on July 5, 2011 at 5:50 p.m. and tenant has signed an acknowledgement of receipt.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord testified the tenant did provide payment of $350.00.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on July 5, 2011 and the effective date of the notice is amended to July 15, 2011, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under section (46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$4,150.00** comprised of rent owed.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 03, 2011.

Residential Tenancy Branch