



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 dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

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 a monetary order for unpaid rent; for 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, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on April 29, 2011 for a 6 month fixed term tenancy beginning on May 1, 2011 for the monthly rent of \$895.00 due on the 1st of each month and a security deposit of \$447.50 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 18, 2011 with an effective vacancy date of July 31, 2011 due to \$1,815.00 in unpaid rent.

Testimony from the landlord's agent indicates the tenant failed to pay the full rent owed for the months of May, June, July and August 2011 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on July 18, 2011 at 10:00 a.m. and that this service was witnessed by a third party.

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 tenant testified that he did not pay rent for July or August 2011 but that he had resolved the matters of rent paid for May and June 2011 with the previous landlord. The landlord did not provide a tenant ledger or statement of account. The landlord testified that their company took over the property management on June 26, 2011 and they have no records of the tenant's claim of payment for May and June 2011.

Analysis

I have reviewed all documentary evidence and testimony 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 21, 2011 and the effective date of the notice was July 31, 2011. 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.

As to the value of the rent owed to the landlord, as the tenant disputes the amount and the landlord has failed to provide any documentary evidence of the state of the tenant's account, I find the landlord has failed to establish the tenant owes any rent for the months of May and June 2011. I do accept the tenant's testimony that he has not as of yet paid any rent for July and August 2011.

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 in the amount of **\$1,840.00** comprised of \$1,790.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$447.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,392.50**. 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 31, 2011.

Residential Tenancy Branch