



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, MT, CNR

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for a more time to make an application to cancel a notice to end tenancy; and for cancellation of a 10 Day Notice to End Tenancy.

By the landlord: as an application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions. The tenant did not address his application for more time to apply for cancellation of a notice to end tenancy I dismiss this portion of the tenant's application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Should the notice to end tenancy be set aside?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the fixed term tenancy started on December 1st, 2010. The rent is \$1375.00 payable on the first of each month and the tenant paid a security deposit of \$687.50.

K.D. stated that on July 12th, 2011, she served the tenant a 10 Day Notice to End Tenancy by posting the notice on the tenant's door. She stated that on July 19th, 2011, the tenant gave her a cheque for the rent post dated July 28th, 2011, and that a stop payment was made on the cheque. She said that she wrote the tenant a letter on July 21st, 2011, informing the tenant that a post dated cheque was not acceptable. K.D. stated that rent for August was not paid either, and she amended her monetary claim at the hearing to \$2750.00 to reflect unpaid rent for two months.

The tenant stated that this is not the first time that he has been late and that it never seemed to be a problem. He said that his father held the rent money in trust, and that upon finding out that he was evicted, his father put the stop payment on the cheque. The tenant said that his father has money to pay rent for the next three months, but that rent was not paid for August pending the outcome of this hearing.

Analysis

The tenant in this matter acknowledged receipt of the notice and issued a cheque post dated July 28th, 2011. Pursuant to section 90 of the Act, the notice was considered served on July 15th and the tenant had until July 20th to pay the rent. The tenant paid the landlord on July 21st with a cheque post dated July 28th. I do not find that rent was paid within the allowed 5 day time frame and therefore the landlord is entitled to an order of possession.

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act.

Based on the evidence I find that the landlord had grounds to issue the notice to end tenancy and that the said notice is valid; the landlord is also entitled to recover the rent for July and August as claimed.

Conclusion

The tenant's application is dismissed.

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord's agent established a claim of \$2750.00. I authorize the landlord to retain the tenants' \$687.50 security deposit for a balance owing of \$2062.50. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$2112.50. This Order may be registered in the 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 25, 2011.

Residential Tenancy Branch