



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNR, FF

Introduction

The hearing was scheduled in response to the an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause, 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 stated that she personally served the female Tenant with copies of the Application for Dispute Resolution and Notice of Hearing at approximately 3:50 p.m. on July 15, 2011, in the presence of her sister-in-law. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession, to a monetary Order for unpaid rent, and to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 55 and 72 of the *Act*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began in November or December of 2010 and that the parties have a tenancy agreement that requires the Tenant to pay monthly rent of \$350.00 on the first day of each month.

The Agent for the Landlord stated that the Tenant has paid no rent for July or August of 2011. The Landlord applied for a monetary Order for unpaid rent from July. At the hearing the Agent for the Landlord applied to amend the Application for Dispute Resolution to include a monetary claim for unpaid rent from August of 2011.

The Agent for the Landlord stated that she personally served the Tenant with a One Month Notice to End Tenancy for Cause on May 30, 2011. The One Month Notice to End Tenancy for Cause declared that the Tenant must vacate the rental unit by July 15, 2011.

The Notice to End Tenancy for Cause informed the Tenants that they must move out of the rental unit by the date set out on the front page of the Notice if they do not dispute the Notice within ten days of receiving it. I have no evidence that the Tenants disputed the Notice to End Tenancy.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has a tenancy agreement with the Landlord that requires him to pay monthly rent of \$350.00 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent for July or August of 2011. I grant the Landlord's application to include a claim for unpaid rent for August of 2011 as I find that the Tenant know, or should have known, that he was obligated to pay rent for August. I therefore find that amending the Landlord's Application for Dispute Resolution is not unduly prejudicial to the Tenant.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that on May 30, 2011 the Tenant was served with a One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*, which required him to vacate the rental unit by July 15, 2011.

Section 47(2)(b) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant is required to pay rent on the first day of each month, the earliest effective date that the Notice is July 31, 2011.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was July 31, 2011.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Notice to End Tenancy, I find that the Tenant accepted that the tenancy was ending on the effective date of the tenancy, pursuant to section 47(5) of the *Act*. I therefore find that the Landlord is entitled to an Order of Possession.

As the Tenant failed to pay rent for July and he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$350.00 in rent for July of 2011. As the Tenant did not vacate the rental unit on July 31, 2011, I find that he is obligated

to pay rent, on a per diem basis, for the days he remains in possession of the rental unit. I am granting the Landlord an Order of Possession that is effective on August 31, 2011 and I therefore find that the Tenant must also pay \$350.00 in rent for August of 2011.

I find that the Landlord's application has merit and I therefore find that he is entitled to recover the fee for filing this Application for Dispute Resolution from the Tenant.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on August 31, 2011. 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 \$750.00, which is comprised of \$700.00 in unpaid rent 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 for the amount of \$700.00. 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 12, 2011.

Residential Tenancy Branch