



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened 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 money owed for compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for a monetary Order for unpaid rent and money owed for compensation for damage or loss, as no money is currently outstanding.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant, via registered mail, at the rental unit, on July 20, 2011. The female Tenant acknowledged that this mail was sent to the rental unit. The female Tenant stated that the male Tenant no longer resides at the rental unit. I find that these documents have been served to the male Tenant in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act)*, however the male Tenant did not appear at the hearing. The hearing proceeded in the absence of the male Tenant.

The Landlord and the female Tenant were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to both Tenants by registered mail on July 20, 2011. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were personally served to the Landlord's business office on August 10, 2011 or August 11, 2011. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

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 recover the filing fee from the Tenant for the cost of the

Application for Dispute Resolution, pursuant to sections 55 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2001; that the parties had a tenancy agreement that required the Tenant to pay rent by the first day of each month; that the Tenant was required to pay subsidized rent of \$985.00 for July by the first day of July of 2011; and that the Tenant was required to pay unsubsidized rent of \$1,175.00 for August by the first day of August of 2011.

The Tenant contends that the Agent for the Landlord told her she could pay her rent on the fifteenth of the month in May, June, or July of 2011. The Agent for the Landlord stated that the Tenant was not given permission to pay her rent late and that she provided the Tenant with a letter, dated March 09, 2011, in which the Tenant was clearly advised that rent was due on the first day of each month. The Tenant submitted a copy of this letter.

The Landlord and the Tenant agree that the Tenant did not pay rent for July by July 01, 2011.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of July 15, 2011, was posted on the door of the rental unit on July 05, 2011. The Tenant stated that she located the Notice of the door of the rental unit on July 03, 2011 or July 04, 2011.

The Landlord and the Tenant agree that the Tenant paid the rent for July, in full, on July 15, 2011. The Landlord and the Tenant agree that on July 15, 2011 the Tenant paid the full rent that was due for July; that the Tenant was given a receipt that clearly indicates the rent was being accepted for "rent" and "use and occupancy only"; that a representative of the Landlord did not advise the Tenant what the term "use and occupancy only" meant when this receipt was issued; and that nobody explained to the Tenant that the Landlord did not intend to continue with this tenancy even though the rent had been paid. The Tenant stated that she believed she could continue to live in the rental unit once she paid her rent on July 15, 2011.

The Landlord and the Tenant agree that the Tenant paid the rent for August, in full, on August 02, 2011. The Landlord and the Tenant agree that on August 02, 2011 the Tenant paid the full rent that was due for August; that the Tenant was given two receipts that clearly indicate the rent was being accepted for "rent"; and that a representative of the Landlord did not advise the Tenant that the Landlord did not intend to continue with this tenancy even though the rent had been paid. The Tenant stated that she believed she could continue to live in the rental unit when she paid her rent on August 02, 2011.

The Agent for the Landlord stated that the person who accepted the rent from the Tenant on August 02, 2011 neglected to note that the rent was being accepted for use

and occupancy only, so the Agent for the Landlord generated a second receipt that indicated the rent was being accepted for use and occupancy only.

The Landlord and the Tenant agree that the Tenant was provided with a second receipt for the rent that was paid for August, which clearly indicates the rent was being accepted for "rent" and "use and occupancy only". The Landlord stated that the second rent receipt was delivered by the caretaker, she believes on August 02, 2011 or August 03, 2011. The Tenant stated she received the second receipt on August 05, 2011 or August 08, 2011.

Analysis

Based on the undisputed evidence presented at the hearing I find that the Tenant entered into a written tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$985.00 by July 01, 2011 and unsubsidized rent of \$1,175.00 by August 01, 2011; and that the Tenant did not pay the rent for July until July 15, 2011.

I find that the Tenant submitted no evidence to corroborate her statement that she had permission to pay her rent on the fifteenth of May, June, or July, or that refutes the Agent for the Landlord's statement that the Tenant was not given permission to pay her rent on the fifteenth of May, June, or July. I note that the letter, dated March 09, 2011, corroborates the Agent for the Landlord's testimony that the Tenant's obligation to pay rent on the first of each month was not waived by the Landlord.

Section 46 of the Act stipulates that a landlord can end a tenancy if rent is not paid when it is due by service notice to end the tenancy. Based on the undisputed evidence presented at the hearing I find that a Ten Day Notice to End Tenancy was posted on the Tenant's door. As the Tenant is uncertain of the day she located the Notice to End Tenancy, I find that it was posted on July 05, 2011, as declared by the Agent for the Landlord.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. As the Tenant cannot recall the precise date that she received the Notice to End Tenancy, I find that the Tenant received the Notice on July 08, 2011, in accordance with section 90 of the *Act*.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on July 08, 2011, I find that the earliest effective date of the Notice was July 18, 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 18, 2011.

Section 46 of the *Act* stipulates that a Tenant has five 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 by July 13, 2011 and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on July 18, 2011.

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only with the express or implied consent of both parties. The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice to End Tenancy, the intention of the parties must be considered. In my view the Landlord clearly expressed its intent not to continue with this tenancy when it indicated on the receipt from July 15, 2011 that the rent was being accepted for "use and occupancy only". Although there was a short delay in informing the Tenant that the August rent was being accepted for use and occupancy only, the Tenant was clearly informed that the rent for August was being accepted for use and occupancy only. As the Landlord clearly expressed that the rent was being accepted for use and occupancy only on two occasions, I cannot conclude that the Landlord intended to waive the Notice to End the Tenancy when rent payments were accepted. As there is no reason for me to conclude that the Landlord reinstated this tenancy, either by express or implied consent, I find that this tenancy was ended in accordance with section 46 of the *Act*.

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's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the filing fee from the Tenant. I therefore grant the Landlord a monetary Order for \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. 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 17, 2011.

Residential Tenancy Branch