



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, ERP

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on July 6, 2011 for:

1. An Order cancelling a Notice to End Tenancy – Section 46; and
2. An Order for the Landlord to make emergency repairs - Section 32.

The Landlord applied on June 21, 2011 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord required to make emergency repairs?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on July 2, 2011. Rent in the amount of \$1,390.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord

collected a security deposit from the Tenant in the amount of \$625.00. The Tenant failed to pay rent for the month of July 2011 and on July 2, 2011 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent. On July 6, 2011 the Tenant filed an application for dispute resolution and on July 16, 2011, the Tenant paid the full amount of rent owing for July 2011. The Landlord accepted this money for use and occupancy only.

The Tenant states that the Landlord has completed the repairs that were applied for in the Tenant's application. The Tenant states that the July rent was unpaid until July 16, 2011 as the marriage has broken down and the Tenant did not have the money to pay the rent. The Tenant states that the amount of \$760.00 was given to the Landlord for August rent and that the Tenant will vacate the unit on August 31, 2011. The Landlord states that the monies taken from the Tenant for August 2011 was accepted for use and occupancy only.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. Although the Tenant filed an application to dispute the notice, the reason provided for failing to pay rent is not a valid reason. Further, although the Tenant paid the rental arrears on July 16, 2011, the Landlord accepted this payment for use and occupancy only and as a result I find that the tenancy has not been reinstated by the late payment of rent. Accordingly, I find that the Landlord is entitled to an **Order of Possession**. The Landlord is also entitled to recovery of the \$50 filing fee and the Landlord may deduct this amount from the

security deposit. As the Landlord has accepted payment of rental arrears for July 2011 and partial rent for August 2011 as use and occupancy only, I dismiss the Landlord's application for a monetary award.

As the Landlord has made the repairs to the unit, the Tenant's application is dismissed.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Tenant's application is dismissed.

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 02, 2011.

Residential Tenancy Branch