



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, 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, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The male Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the first named Respondent, via registered mail, at the rental unit on August 24, 2011. The male Agent for the Landlord cited a Canada Post tracking number that corroborates this statement.

The male Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the second named Respondent, via registered mail, at the rental unit on August 24, 2011. The male Agent for the Landlord cited a Canada Post tracking number that corroborates this statement.

Based on the evidence of the Landlord and in the absence of evidence to the contrary, I find that these documents have been served to each Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenants 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 for unpaid rent; to a monetary Order for unpaid rent, loss of revenue, and/or late fees; to keep 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, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The male Agent for the Landlord stated that this tenancy began on July 05, 2011; that the Tenants are required to pay monthly rent of \$940.00 on the first day of each month; and that the Tenant paid a security deposit of \$470.00.

The male Agent for the Landlord stated that the Tenant did not pay all of the rent due for August until August 22, 2011, at which time the rent was accepted for "use and occupancy only" and a \$25.00 late fee was paid.

The male Agent for the Landlord stated that rent for September has not yet been paid.

The female Agent for the Landlord stated that she put a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of August 21, 2011, on the door of the rental unit on August 11, 2011. The Notice declared that the Tenant owed \$818.71 in rent that was due on August 01, 2011.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenants to pay monthly rent of \$940.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants did not pay all of the rent that was due on August 01, 2011 until August 22, 2011 and that they have not yet paid any rent for September of 2011.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on August 11, 2011.

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. I therefore find that the Tenant is deemed to have received the Notice to End Tenancy on August 14, 2011.

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 August 14, 2011, I find that the earliest effective date of the Notice was August 24, 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 August 24, 2011.

Section 46 of the Act stipulates that a tenant has five (5) 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 Tenants exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the tenancy ended on August 24, 2011 and I will grant the landlord an Order of Possession that is effective two days after the order is served upon the Tenants.

As the Tenants did not vacate the rental unit on August 24, 2011, which was the effective date of the Notice to End Tenancy, I find that they are obligated to pay rent, on a per diem basis, for the days they remain in possession of the rental unit. As they have already paid rent for August of 2011, I find that the Landlord has been duly compensated for the period between August 24, 2011 and August 31, 2011.

I also find that the Tenants must compensate the Landlord for the six days in September that they have remained in possession of the rental unit, at a daily rate of \$31.33, which equates to \$187.98.

I find that the Tenants fundamentally breached the tenancy agreement when they did not pay rent when it was due. I find that the Tenants fundamentally breached section 46(5) of the Act when they did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit makes it difficult, if not impossible for the Landlord to find new tenants for prior to September 15, 2011, as the Tenants have not yet vacated the rental unit. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience between September 07, 2011 and September 15, 2011, which is \$282.02.

I decline to award compensation for the entire month of September, as it is entirely possible that new tenants could be located for September 15, 2011 if the Tenants vacate immediately. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for loss of revenue if the Tenants do not comply with the Order of Possession.

As the tenancy ended on August 24, 2011, I find that the Tenant was not obligated to pay rent on September 01, 2011. I therefore dismiss the Landlord's application for a late fee for not paying rent on September 01, 2011.

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

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. 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 \$520.00, which is comprised of \$470.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenants' security deposit, in the amount of \$470.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$50.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: September 06, 2011.

Residential Tenancy Branch