



Dispute Resolution Services

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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, 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. It is apparent from information included on the Application for Dispute Resolution that the Landlord is seeking rent from September and late fees, and the Application for Dispute Resolution has been amended accordingly.

The Landlord stated that she personally served the Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on August 16, 2011. The Landlord submitted a document that is signed by the Tenant that corroborates this statement. 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 for unpaid rent; to a monetary Order for unpaid rent/loss of revenue; 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 *Act*.

Background and Evidence

The Landlord stated that the Tenant's mother was the original tenant of this rental unit; that the tenancy was assigned to the Tenant in May or June of 2011; that the tenancy agreement required the Tenant to pay monthly rent of \$675.00 on the first day of each month; and that the security deposit of \$337.50, which was paid by the Tenant's mother on September 07, 2010, was transferred to this tenancy.

The Landlord stated that the Tenant did not pay rent when it was due on August 01, 2011; that the Tenant paid a portion of the outstanding rent on August 08, 2011, which was accepted for "use and occupancy"; and that the Tenant paid the remainder of the outstanding rent on August 16, 2011, which was accepted for "use and occupancy". The Landlord stated that the Tenant has paid a \$25.00 fee for not paying rent when it was due on August 01, 2011.

The Landlord stated that on August 03, 2011 she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of August 13, 2011, on the door of the rental unit.

The Landlord stated that the Tenant has not paid rent for September and she is seeking a monetary Order for loss of revenue from that month.

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 required the Tenant to pay monthly rent of \$675.00 on the first day of each month; and that the Tenant did not pay the rent when it was due on August 01, 2011.

When 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 Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the door on August 03, 2011, which declared that the Tenant must vacate the rental unit by August 13, 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 received the Notice to End Tenancy on August 06, 2011.

Section 46(1) of the *Act* stipulates that a 10 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 06, 2011, I find that the earliest effective date of the Notice was August 16, 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 16, 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 Tenant 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 will grant the landlord an Order of Possession that is effective two days after the order is served upon the Tenant.

As the Tenant did not vacate the rental unit on August 16, 2011, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As he has already paid rent for the period between August 16, 2011 and August 31, 2011, I find that the Landlord has been duly compensated for that period. I also find that the Tenant must compensate the Landlord for the 14 days in September that he has remained in possession of the rental unit, at a daily rate of \$22.50, which equates to \$315.00.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when he did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit makes it difficult, if not impossible for the Landlord to find new tenants for September of 2011. I therefore find that the Tenant must compensate the Landlord for the loss of revenue the Landlord can be reasonably expected to experience for the remainder of September, which is \$360.00.

As this tenancy ended on August 16, 2011, I find that the Tenant was no longer obligated to pay rent on September 01, 2011. I therefore find that the Landlord is not entitled to a late fee for the month of September.

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 \$725.00, which is comprised of \$675.00 in loss of revenue 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 keep the Tenant's security deposit, in the amount of \$337.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$387.50. 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: September 14, 2011.

Residential Tenancy Branch