



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, 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, 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 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail, at the rental unit, on August 18, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents to 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, a monetary Order for unpaid rent/loss of revenue, 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 Agent for the Landlord stated that this tenancy began on February 01, 2003 and that the Tenant is currently required to pay monthly rent of \$725.00 on the first day of each month.

The Agent for the Landlord stated that the Tenant did not pay rent when it was due on August 01, 2011. She stated that on August 04, 2011 at approximately 6 p.m. she personally served a Ten Day Notice to End Tenancy for Unpaid Rent to the Tenant, which had an effective date of August 15, 2011.

The Agent for the Landlord stated that on August 04, 2011 the Landlord discovered a rent cheque from the Tenant, which had been left at the Landlord's address sometime after 7 p.m. The Agent for the Landlord stated that on August 05, 2011 the Landlord

attempted to cash that cheque and that it was not honoured by the Tenant's financial institution.

The Agent for the Landlord stated that on August 22, 2011 the Tenant paid her rent for August, in cash, for which she was issued a receipt that indicated the rent was being accepted for use and occupancy only.

The Agent for the Landlord stated that on September 06, 2011 she located a rent cheque for September from the Tenant, which has since been returned by the Tenant's financial institution due to lack of funds.

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 \$725.00 on the first day of each month; and that the Tenant did not pay rent for August until August 22, 2011. In reaching this conclusion, I find that the cheque that was left for the Landlord on August 04, 2011 does not constitute a rent payment, as it was not honoured by the Tenant's financial institution.

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 on August 04, 2011 the Tenant was personally served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by August 15, 2011, pursuant to section 46 of the *Act*.

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 ended on August 15, 2011. On this basis I will grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

As the Tenant did not vacate the rental unit on August 15, 2011, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she has paid rent for August of 2011, I find that the Landlord has been compensated for that month. I also find that the Tenant must compensate the Landlord for the 19 days in September that she has remained in possession of the rental unit, at a daily rate of \$24.16, which equates to \$459.04.

I find that the Tenant fundamentally breached the tenancy agreement when she did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when she did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that her continued occupancy of the rental unit makes it

difficult, if not impossible, for the Landlord to find new tenants for the remainder of September. I therefore find that the Tenant must compensate the Landlord for the loss of revenue experienced between September 20, 2011 and September 30, 2011, which is \$265.96.

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 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 \$775.00, which is comprised of \$725.00 in unpaid rent/loss of revenue 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 \$725.00. 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: September 19, 2011.

Residential Tenancy Branch