



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 scheduled 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 to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The application was amended to include a claim for unpaid October, 2011, rent in the sum of \$850.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

Background and Evidence

During the hearing the parties agreed that the tenancy commenced over 20 years ago, currently rent is \$825.00 per month, due on the first day of the month.

The parties agreed that on September 6, 2011, the tenant received a notice ending tenancy for unpaid rent that had been posted to her door on the same day.

The 10 Day Notice to End Tenancy for non-payment of rent had an effective date of September 16, 2011. The Notice indicated that the Notice would be automatically cancelled if the landlord received **\$850.00** within five days of September 6, 2011. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant paid her rent on September 22, 2011, at which time the landlord issued a receipt for use and occupancy only. The tenant acknowledged that the landlord also told the tenant that she must vacate the rental unit.

The tenant had been given 2 prior 10 day Notices ending tenancy; one in June and a 2nd in August, 2011. On both occasions the tenant failed to pay her rent within 5 days of receiving the Notice. In August the landlord had issued a receipt, allowing the tenancy to be reinstated.

The tenant testified that she has been a good, long-term tenant and that she should be judged on her past behaviour. The landlord stated that the tenant is repeatedly late paying rent and that they now wish to take possession of the unit.

The tenant confirmed that she has yet to pay October, 2011, rent owed in the sum of \$850.00.

Analysis

The tenant has confirmed she did not pay the September rent owed within 5 days of September 6, 2011. The landlord issued a receipt for use and occupancy only and told the tenant that her tenancy was ending.

Despite the length of this tenancy, the Act is very clear; 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. The tenant did not pay her rent within 5 days of September 6, 2011, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended when she failed to pay September rent in full by September 11, 2011. Even though the landlord reinstated the tenancy on 2 previous occasions, I find the intentions of the landlord were clear in September; that the tenancy must come to an end. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid October, 2011, rent in the amount of \$850.00, and that the landlord is entitled to compensation in that amount.

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.

Any deposit that may have been paid will be disbursed as provided by the Act.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to 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 \$900.00, which is comprised of \$850.00 in unpaid October, 2011, rent 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 in the sum of \$900.00. 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: October 19, 2011.

Residential Tenancy Branch