



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail tracking number as proof he served the tenant with the hearing documents via registered mail sent to the rental unit on September 9, 2011. The landlord testified that a search of the tracking number showed that the hearing documents were successfully delivered on September 12, 2011. I was satisfied the tenant was sufficiently notified of this hearing and I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to recover unpaid rent for August and September 2011?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced June 1, 2009 and the tenant paid a \$675.00 security deposit. The tenant was required to pay rent of \$1,300.00 on the 1st day of every month. The tenant failed to pay rent for August 2011 and the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on August 2, 2011. The landlord and tenant agreed the tenant would pay the outstanding rent for August 2011 on September 1, 2011 with the rent for September 2011. The tenant did not fulfill the terms of this agreement and made no payment on September 1, 2011. The landlord issued another 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and personally served it upon the tenant on September 2, 2011. The tenant did not pay the outstanding rent after receiving the September 2, 2011 Notice.

The landlord testified that it appears as though the tenant has abandoned the rental unit on or about September 15, 2011; however, an occupant remains in the rental unit.

Accordingly, the landlord requested an Order of Possession be provided to him in the event he does not enter into a tenancy with the occupant.

The landlord had indicated he was seeking unpaid rent for two months, August and September 2011 in the details of dispute; however, the amount appearing in the Monetary Order box on the application is consistent with three months of rent. The landlord clarified that he is seeking unpaid rent for August and September 2011 with this application.

Documentary evidence provided for this proceeding included: the tenancy agreement; 10 Day Notices to End Tenancy for Unpaid Rent issued in August 2011 and September 2011; and, a written summary of events.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on September 12, 2011 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant. In the event the tenant has abandoned the rental unit I order that the landlord may serve the Order of Possession upon the occupant or post it on the door of the rental unit. If vacant possession is not returned to the landlord, the landlord may enforce the Order of Possession in The Supreme Court of British Columbia as an Order of that court.

I find the landlord entitled to recover unpaid rent from the tenant for the months of August and September 2011 in the amount of \$2,600.00 and I award that amount to the landlord. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

August 2011 and September 2011 unpaid rent	\$ 2,600.00
Filing fee	50.00
Less: security deposit	<u>(675.00)</u>
Monetary Order	\$ 1,975.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective two days after service. If the tenant has abandoned the rental unit the landlord is authorized to serve the Order of Possession upon the occupant or post it on the door of the rental unit.

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,975.00 to serve upon the tenant.

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 05, 2011.

Residential Tenancy Branch