



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. It is readily apparent that the Landlord is also seeking compensation for loss of revenue from September of 2011 and the application has been amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

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 to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 03, 2011 and that the Tenant was required to pay monthly rent of \$850.00 on the first day of each month.

The Landlord and the Tenant agree that the Tenant did not pay rent when it was due on August 01, 2011 and that he did not pay any rent for September of 2011. The parties agree that the Tenant paid \$300.00 in rent on August 15, 2011; \$50.00 on September 08, 2011; \$200.00 on September 16, 2011; and \$120.00 on September 20, leave outstanding rent from August in the amount of \$180.00. The parties have an understanding that this tenancy will continue only if the Tenant is able to pay the rent in full by September 30, 2011.

The Agent for the Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of August 15, 2011, on the door of the rental unit on August 05, 2011. The Notice declared that the Tenant owed \$850.00 in rent that was due on August 01, 2011. The Tenant acknowledged locating the Notice, although he does not recall the date he located it.

Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$850.00 on the first day of each month.

Based on the undisputed evidence presented at the hearing, I find that the Tenant still owes \$180.00 in rent from August. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$180.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the undisputed evidence presented at the hearing, I find that a Notice to End Tenancy that directed the Tenant to vacate the rental unit by August 15, 2011, was posted at the unit on August 05, 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 08, 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 08, 2011, I find that the earliest effective date of the Notice was August 18, 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 18, 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 18, 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 the Landlord has agreed to an Order of Possession that is not effective until September 30, 2011, and the Tenant has indicated his intent to remain in possession of the rental unit until at least September 30, 2011, I find that the Tenant owes \$850.00 in loss of revenue 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 grant the Landlord an Order of Possession that is effective at 1:00 p.m. on September 30, 2011. 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 \$1,080.00, which is comprised of \$1,030.00 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 \$1,080.00. 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 26, 2011.

Residential Tenancy Branch