

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.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each Tenant, via registered mail, at the rental unit on October 05, 2011. The Landlord submitted Canada Post documentation that corroborates two packages were sent to the rental unit. These documents are deemed 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; to a monetary Order for unpaid rent; 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 stated that this tenancy began on November 01, 2010, which required the Tenant to pay monthly rent of \$1,200.00 on the first day of each month. The Landlord submitted a written tenancy agreement that corroborates this statement.

The Landlord stated that the cheque the Tenants gave for rent for September was returned due to insufficient funds. He stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of September 23, 2011, on the door of the rental unit on September 17, 2011. The Notice declared that the Tenant owed \$1,200.00 in rent that was due on September 01, 2011.

The Tenants paid \$500.00 in rent for September on September 20, 2011 and \$600.00 in rent for September on October 01, 2011. The Landlord advised the Tenant that the tenancy would not continue unless he received the full rent for September and October.

The Landlord stated that the bank would not honour the cheque tendered for rent for October. He stated that the Tenants paid \$200.00 in rent on October 01, 2011, \$100.00 of which was applied to the outstanding rent from September and the remaining

\$100.00 was applied to rent from October, leaving a balance owing for October of \$1,100.00.

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 requires the Tenant to pay monthly rent of \$1,200.00 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent for October, in the amount of \$1,100.00, and that the rent for September was not fully paid until October 01, 2011. I find that no rent is outstanding for September of 2011.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. In the absence of evidence to the contrary, I find that a Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, was posted at the rental unit on September 17, 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 September 20, 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 September 20, 2011, I find that the earliest effective date of the Notice is September 30, 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 September 30, 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 find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on September 30, 2011, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days they remain in possession of the rental unit. As they are still in possession of the rental unit, I find that they must compensate the Landlord for the 20 days in October that they have remained in possession of the rental unit, at a daily rate of \$38.70, which equates to \$774.00. As the Tenant has already paid \$100.00 in rent for October, I find the Tenant still owes \$674.00.

I find that the Tenant fundamentally breached the tenancy agreement when they did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when they did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that their continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of October of 2011. I therefore find that the Tenant must compensate the Landlord for the loss of revenue experienced between October 21, 2011 and October 31, 2011, which is \$426.00.

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.

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 \$1,150.00, which is comprised of \$1,100.00 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 \$1,150.00. 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 20, 2011.
