



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, OPC, 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 Cause, 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 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 September 23, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents 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, 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 Agent for the Landlord stated that this tenancy began on August 01, 2011; that the Landlord and the Tenant had a verbal tenancy agreement; that the Tenant is required to pay monthly rent of \$780.00 on the first day of each month; that rent was paid for August; that rent of \$325.00 was paid for September on September 04, 2011; that the remainder of rent for September has not been paid; and that no rent has been paid for October.

The Landlord has not submitted a copy of a Notice to End Tenancy for Unpaid Rent or a Notice to End Tenancy for Cause to the Residential Tenancy Branch nor has the Landlord served copies of these Notices as evidence for this proceeding.

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 verbal tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$780.00 by 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 \$455.00 of the rent due for September and \$780.00 of the rent due for October of 2011. As he is required to pay rent, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,235.00 in outstanding rent to the Landlord.

As the Landlord has not submitted a Notice to End Tenancy for Cause or a Notice to End Tenancy for Unpaid Rent, I dismiss the Landlord's application for an Order of Possession. I find that I am unable to grant an Order of Possession on the strength of a Notice that is not before me.

I find that the Landlord's application has some 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

As I have made a determination on the Landlord's application for an Order of Possession, I find that the Landlord cannot reapply for an Order of Possession on the basis of a Notice to End Tenancy that has been previously served. I therefore dismiss the Landlord's application for an Order of Possession **without leave to reapply**. The Landlord retains the right to serve the Tenant with another Notice to End Tenancy and to seek an Order of Possession on the basis of the new Notice to End Tenancy.

I find that the Landlord has established a monetary claim, in the amount of \$1,285.00, which is comprised of \$1,235.00 in unpaid 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 for the amount of \$1,285.00. 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 24, 2011.

Residential Tenancy Branch