



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

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 and a monetary Order for unpaid rent.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on November 16, 2011. The Agent for the Landlord cited a Canada Post tracking number 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 for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on October 01, 2010 and that the Tenant is required to pay monthly rent of \$1,500.00 by the first day of each month.

The Agent for the Landlord stated that the Tenant still owes \$500.00 in rent from April of 2011; \$500.00 in rent from May of 2011; and \$730.00 in rent from June of 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 November 12, 2011, on the door of the rental unit on November 02, 2011. The Notice declared that the Tenant owed \$1,855.00 in rent that was due on November 01, 2011.

The Agent for the Landlord stated that the amount of the Notice to End Tenancy included the \$1,730.00 in overdue rent from April, May, and June plus \$125.00 in accrued late and NSF charges. She stated that it did not include unpaid rent from

November as she was not aware that rent had not been paid for November when she served the Notice to End Tenancy.

The Agent for the Landlord stated that she subsequently learned that the Tenant did not pay rent for November when it was due, but that he did pay it on November 07, 2011, at which time he also paid \$100.00 toward late fees and NSF fees. She stated the outstanding rent of \$1,730.00 has not been paid.

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 \$1,500.00 by the first day of each month; and that the Tenant still owes \$500.00 in rent from April of 2011, \$500.00 in rent from May of 2011, and \$730.00 in rent from June of 2011. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,730.00 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 evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, pursuant to section 46 of the *Act*, was posted at the rental unit on November 02, 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 November 05, 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 November 05, 2011, I find that the earliest effective date of the Notice was November 15, 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 November 15, 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.

Conclusion

I 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 \$1,730.00, which represents unpaid rent and I grant the Landlord a monetary Order for this amount. 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: December 01, 2011.

Residential Tenancy Branch