



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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, a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)* or tenancy agreement; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. The Tenant stated that she was acting on behalf of her husband, who was unable to attend the hearing due to work commitments. The parties 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; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on October 01, 2008; that the Tenant is currently required to pay monthly rent of \$1,525.00 by the first day of each month; and that the Tenant paid a security deposit of \$750.00.

The Agent for the Landlord and the Tenant agree that on November 14, 2011 the Tenant owed \$2,275.00 in unpaid rent for the period ending on November 30, 2011 and that the Tenant gave the Landlord a cheque, in the amount of \$1,050.00, on November 14, 2011.

The Agent for the Landlord stated that this cheque has not yet cleared the bank and the Landlord has some concern that it may be returned due to insufficient funds. The Agent

for the Landlord stated that the Tenant has previously been directed to pay their rent by certified cheque or bank draft. The Landlord submitted no evidence to establish that it has the right to demand payment by certified cheque or bank draft.

The Tenant stated that they were unable to make this payment by certified cheque as they did not have the money to pay the bank fees associated to this method of payment.

The Agent for the Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on October 06, 2011. The Tenant stated that they located the aforementioned Ten Day Notice to End Tenancy in their mail box on October 06, 2011. This Notice to End Tenancy, which is dated October 06, 2011, was submitted in evidence. I note that the Notice to End Tenancy did not declare when the Tenant must vacate the rental unit.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$1,525.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that on November 14, 2011 the Tenants still owed \$2,275.00 in rent for the period ending November 30, 2011 and that on November 14, 2011 they gave the Landlord a payment, by cheque, in the amount of \$1,050.00. In the event that payment is honored by the Tenant's financial institution, I find that the Tenant still owes the Landlord \$1,225.00 for rent. In the event that payment is not honored by the Tenant's financial institution, I find that the Tenant will owe the Landlord \$2,275.00. I find that the Landlord is entitled to a monetary Order that reflects the amount due for rent.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the testimony presented by both parties, I find that on October 06, 2011 the Tenant received the Notice to End Tenancy, which is dated October 06, 2011. On the basis of the undisputed evidence, I find that the Notice to End Tenancy that is the subject of this dispute does not declare when the Tenants must vacate the rental unit.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(c) of the *Act* stipulates that to be effective a notice to end tenancy must state the effective date of the notice. In the circumstances before me I find that the Notice to End Tenancy is not effective as it does not comply with section 52(c) of the *Act*. As the Landlord served the Tenant with an ineffective Notice to End Tenancy, I dismiss the Landlord's application for an Order of Possession.

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

I find that the Landlord has established a monetary claim, in the amount of \$2,325.00, which is comprised of \$2,275.00 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 \$2,325.00.

I find that this monetary Order shall be automatically reduced to \$1,275.00 unless the Landlord is able to establish it has been unable to cash the cheque, in the amount of \$1,050.00, they were given on November 14, 2011. 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.

As this tenancy will continue, I have not considered the Landlord's application to apply the security deposit to this debt. The Landlord and the Tenant are reminded that the Landlord has the right to retain an amount from a security deposit that the director has previously ordered the tenant to pay to the landlord which remains unpaid at the end of the tenancy, pursuant to section 38(3) of the *Act*.

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: November 15, 2011.

Residential Tenancy Branch