



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPB, MNR, MNDC, 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, an Order of Possession because the Tenant has breached an agreement with the Landlord; a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The male Landlord stated that he personally served the Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on November 06, 2011, in the presence of the Witness. The Witness testified that she observed the aforementioned service of documents. 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; to compensation for money loaned to the Tenant; 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 September 01, 2010 and that the Tenant is required to pay monthly rent of \$500.00 by the first day of each month. He stated that the Tenant has paid no rent for September of 2011 and no rent for November of 2011.

The female Landlord stated that she personally served the Tenant with a One Month Notice to End Tenancy for Cause on August 29, 2011. The male Landlord stated that this was not served as evidence in these matters because he was not aware that he was required to submit the evidence to the Residential Tenancy Branch or that he was required to serve evidence to the Tenant. The female Landlord stated that this Notice to

End Tenancy cited several reasons for ending the tenancy, including that the Tenant was repeatedly late paying rent.

The female and the male Landlord both stated that the Tenant has not been served with a Ten Day Notice to End Tenancy for Unpaid Rent.

The male Landlord stated that his wife loaned the Tenant \$65.00 which he is seeking to recover as a result of these proceedings.

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 \$500.00 by the first day of each month and that the Tenant did not pay rent when it was due on September 01, 2011 and November 01, 2011. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,000.00 in outstanding rent to the Landlord.

I decline to consider the Landlord's application to recover the \$65.00 personal loan made to the Tenant, as I do not have jurisdiction over issues personal loans between parties.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*, by serving the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent. On the basis of the testimony provided by both Landlords, I find that the Tenant has not been served with a Ten Day Notice to End Tenancy for Unpaid Rent. I therefore dismiss the Landlord's Application for an Order of Possession for Unpaid Rent.

Section 47 of the *Act* stipulates that a landlord may end a tenancy for a variety of reasons provided the landlord serves the tenant with a Notice to End Tenancy that complies with the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I accept that the Landlord served the Tenant with a One Month Notice to End Tenancy on August 29, 2011, although I do not have a copy of that Notice before me. I note that the Landlord did not submit a copy of the One Month Notice to End Tenancy to the Residential Tenancy Branch and the Landlord did not serve a copy of the Notice to the Tenant for the purposes of relying upon it as evidence for these proceedings. As I have been unable to view the One Month Notice to End Tenancy, I find that the Landlord has submitted insufficient evidence to establish that the Tenant has been served with a Notice to End Tenancy that complies with the *Act*. I therefore find that the Landlord has failed to establish that it is entitled to an Order of Possession on the basis of this Notice to End Tenancy.

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 \$1,050.00, which is comprised of \$1,000.00 in unpaid rent from September and November of 2011 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 \$1,050.00. 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: November 23, 2011.

Residential Tenancy Branch