



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 attended the hearing at the scheduled start time of the hearing. Prior to the Tenant attending the hearing 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 14, 2011. The Landlord cited a Canada Post tracking number that corroborates this statement. I determined that these documents had been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, and I proceeded with the hearing in the absence of the Tenant.

The Tenant did not attend the hearing until ten minutes after the scheduled start time of the hearing. She was apprised of the information provided to me by the Landlord prior to her attendance and was given the opportunity to respond to the information provided by the Landlord prior to her attendance. She stated that she did not receive notification that she had registered mail until the day of the hearing and that she received the Application for Dispute Resolution and Notice of Hearing on the morning of the hearing.

The Landlord submitted documents to the Residential Tenancy Branch. He stated that he sent copies of these documents to the Tenant at the rental unit, via registered mail, on November 16, 2011. The Landlord cited a Canada Post tracking number that corroborates this statement. The Landlord stated that on November 23, 2011 he left a copy of these same documents in the rental unit.

The Tenant stated that she has not received the aforementioned documents in the mail but she did locate the documents that the Landlord left in her rental unit. As the Tenant received these documents they were accepted as evidence for these proceedings.

The Tenant requested an adjournment on the basis that she did not receive the Landlord's Application for Dispute Resolution and the Notice of Hearing until the morning of the hearing. She was advised that I would consider the request for an adjournment after obtaining further information regarding the dispute.

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 Landlord and the Tenant agree that this tenancy began on July 02, 2010; that the Tenant is currently required to pay monthly rent of \$710.00 by the first day of each month; that she still owes \$10.00 in rent from October of 2011; and that she has not paid rent for November of 2011.

The Tenant repeatedly stated that she did not intend to pay the rent and that she is unable to pay the rent for health related reasons. She was given numerous opportunities to provide a legal basis for withholding the rent, which she was unable to do. She did state that an Information Officer at the Residential Tenancy Branch advised her that she did not have to pay her rent.

The Landlord stated that he 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 Tenant stated that she located this Notice on her door on November 03, 2011.

The Tenant stated that she filed an Application for Dispute Resolution seeking to set aside this Notice to End Tenancy. She stated that she does not have this document with her so she is unable to state when she filed that Application for Dispute Resolution and she does not know the file number of that Application. The Landlord stated that he was not aware the Tenant had filed an Application for Dispute Resolution disputing the Ten Day Notice to End Tenancy.

The Landlord stated that he posted a One Month Notice to End Tenancy for Cause, which had a declared effective date of November 30, 2011 on the door of the rental unit on October 21, 2011. The Tenant stated that she located this Notice on her door on, or about, that date.

The Tenant stated that she filed an Application for Dispute Resolution seeking to set aside the One Month Notice to End Tenancy. She stated that she does not have this document with her so she is unable to state when she filed that Application for Dispute Resolution and she does not know the file number of that Application. The Landlord stated that he was not aware the Tenant had filed an Application for Dispute Resolution disputing the One Month Notice to End Tenancy.

Analysis

On the basis of the undisputed testimony of both parties, I find that the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$710.00 by the first day of each month; that she still owes \$10.00 in rent from October of 2011; and that she has not yet paid rent for November of 2011.

Section 26(1) of the *Act* stipulates that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As the Tenant provided no testimony to suggest that she has the legal right to withhold any portion of the rent, I find that she remains obligated to pay rent when it is due. I therefore find that the Tenant must pay the Landlord \$720.00 in unpaid rent from October and November of 2011.

In reaching this conclusion I placed no weight on the Tenant's testimony that someone at the Residential Tenancy Branch told her she could withhold rent. In reaching this conclusion I was influenced, in part, because I do not know what information the Tenant provided to the Residential Tenancy Branch and I do not know whether the Tenant properly interpreted the information provided to her by the Residential Tenancy Branch.

More importantly, my decision in this matter must be based on the information provided to me at the hearing and cannot be influenced by a third party's interpretation of the merits of the dispute.

Section 46 of the *Act* authorizes landlords to end a tenancy if rent is not paid when it is due by giving notice to end the tenancy on a date that is not earlier than ten days after the tenant receives the notice.

On the basis of the undisputed testimony of both parties, I find that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of November 12, 2011, was posted on the Tenant's door. In the absence of evidence to the contrary, I accept the Tenant's testimony that she located this Notice to End Tenancy on November 03, 2011.

As the Tenant did not pay rent when it was due on November 01, 2011 and she received a Ten Day Notice to End Tenancy on November 03, 2011, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. I therefore find that the Landlord is entitled to an Order of Possession on the basis of the Ten Day Notice to End Tenancy.

As this tenancy is ending pursuant to section 46 of the *Act* and the Landlord is being granted an Order of Possession, I find that it is not necessary for me to consider the merits of the Notice to End Tenancy for Cause that was served to the Tenant.

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 for Dispute Resolution.

The Tenant was advised that her request for an adjournment was being denied and that I was basing my decision on the testimony provided at the hearing. I denied the application for an adjournment for the following reasons:

- The Landlord served the Tenant with Application for Dispute Resolution and the Notice of Hearing in accordance with the *Act* and the Rules of Procedure
- The delay in the Tenant receiving the Application for Dispute Resolution and the Notice of Hearing was the result of an error by Canada Post or the Tenant, and not by the actions of the Landlord
- This dispute relates to a non-payment of rent and it would be prejudicial to the Landlord to delay a decision in this matter
- As the Tenant received the Ten Day Notice to End Tenancy on November 03, 2011 and has allegedly filed an Application for Dispute Resolution disputing the Notice, she has had ample time to consider her reasons for failing to pay the rent
- The Tenant clearly stated that she is refusing to pay her rent because for health related reasons, which under no circumstances exempts her from paying rent when it is due
- The Tenant clearly stated that she is refusing to pay her rent because she was told by a Residential Tenancy Branch Information Officer that she was not required to pay her rent, which under no circumstances exempts her from paying rent when it is due
- That after being given numerous opportunities to explain what information she would provide to support her decision to withhold rent if the hearing was adjourned she simply repeated that she was refusing to pay rent for health related reasons.

In determining that an adjournment should not be granted I concluded, based on the information provided to me by the Tenant, that the Tenant would be unable to present additional evidence that would alter my decision in this matter and that a decision would simply serve to further disadvantage the Landlord.

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 \$770.00, which is comprised of \$720.00 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 \$770.00. 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 30, 2011.

Residential Tenancy Branch