



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This dispute was the subject of a Direct Request Proceeding on December 28, 2011, at which a Dispute Resolution Officer granted the Landlord a monetary Order of \$600.00 and an Order of Possession.

On January 03, 21012 the Tenant filed an Application for Review Consideration in which the Tenant applied for a review of the decision and Orders. On January 11, 2012 another Dispute Resolution Officer granted the application to review.

This review hearing was convened to determine the merits of 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 fee for filing their Application for Dispute Resolution.

I specifically note that the Landlord has only named one of two co-tenants as an Applicant in this matter and that the Landlord is under no obligation to serve documents relating to these proceedings on the co-tenant that is not named on this Application for Dispute Resolution.

Both parties were represented at the hearing. They 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.

The Landlord stated that he served no evidence to the Tenant in regards to this dispute. The Tenant stated that she served no evidence to the Landlord in regards to this dispute.

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; 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 September 09, 2011; that the Tenant named on the Application for Dispute Resolution and a male not named on the Application for Dispute Resolution signed the tenancy agreement; and that the Tenant and her co-tenant were jointly responsible for paying rent of \$650.00 by the first day of each month.

The Landlord and the Tenant agree stated that Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 18, 2011 was personally served to the female Tenant on December 08, 2011. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Landlord stated that the Tenant currently owes \$325.00 in rent for December of 2011. He stated that the declaration on the Notice to End Tenancy that the Tenant owed \$600.00 on December 01, 2011 in rent was made in error.

The Tenant stated that she did not file an Application for Dispute resolution seeking to set aside the Notice to End Tenancy and that she did not attempt to pay the outstanding rent of \$325.00 within five days of receiving the Notice to End Tenancy.

The Landlord and the Tenant agree that the Tenant has attempted to give the Landlord her rent cheque for January but the Landlord has refused to accept this payment. The parties agree this payment was not offered prior to December 15, 2011.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that Tenant and a male not named in the Application for Dispute Resolution are co-tenants and that they are jointly required to pay monthly rent of \$650.00 by the first day of each month. As they are co-tenants, the landlord has the right to end the tenancy even if one of the co-tenants pays half of the rent.

Section 46 of the *Act* authorizes a landlord to end a tenancy if all of the rent is not paid when it is due, by giving notice to end the tenancy. On the basis of the undisputed evidence presented at the hearing, I find that \$325.00 in rent that was due on December 01, 2011 has not yet been paid.

On the basis of the undisputed evidence presented at the hearing, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the female Tenant on December 08, 2011.

Section 46(4) 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 to End Tenancy. 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 that is effective two days after it is served upon the Tenant.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

As the Landlord is entitled to an Order of Possession, I find that the initial Order of Possession, which is effective two days after it is served upon the Tenant, remains in full force and effect. 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 \$375.00, which is comprised on \$325.00 in unpaid rent and \$50.00 for the cost of filing the Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$375.00. 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 monetary Order for \$375.00 replaces the initial monetary Order for \$600.00 and the initial Order, dated December 28, 2011, is of no force or effect. The amount of the monetary Order has been reduced due to the fact the Landlord acknowledge he erroneously declared that the Tenant still owed \$600.00 in rent for December of 2011, when the Tenant actually owed \$325.00.

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: February 07, 2012.

Residential Tenancy Branch