Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, 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, 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 Agent for the Landlord stated that she personally served the female Tenant with two copies of the Application for Dispute Resolution, Notice of Hearing, and evidence on May 17, 2012. In the absence of evidence to the contrary, I find that these documents have been served to the female Tenant in accordance with section 89 of the *Residential Tenancy Act (Act),* however the female Tenant did not appear at the hearing.

The Agent for the Landlord stated that when she served the aforementioned documents to the female Tenant the male Tenant was observing the interaction from a balcony which was in close proximity to her, and that he overheard the conversation between her and the female Tenant. In the absence of evidence to the contrary, I find that these documents have been sufficiently served to the male Tenant pursuant to section 71(2)(c) of the *Act,* however the male 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; 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 *Act.*

Background and Evidence

The Agent for the Landlord stated that this tenancy began on February 15, 2012; that they had a written tenancy agreement that required the Tenant to Pay monthly rent of $2,400.00; and that the parties verbally agreed to amend the tenancy agreement so that ½ of the rent was due by the first of each month and the other ½ of the rent was due by the fifteenth of each month.

The Agent for the Landlord stated that the Tenant still owes $1,200.00 in rent for April and that no rent has been paid for May or June of 2012. The Landlord is seeking compensation for unpaid rent/loss of revenue in the amount of $6,000.00.

The Witness stated that he personally served a Ten Day Notice to End Tenancy for Unpaid Rent to the female Tenant on May 08, 2012. The Notice, which was submitted as evidence, declares that the Tenant must vacate the unit by May 08, 2012.

The Agent for the Landlord stated that she is not certain whether the Tenant has vacated the rental unit but she observed the Tenant's vehicle at the residence on June 03, 2012.

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 $1,200.00 by the first day of each month and $1,200.00 by the fifteenth day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay the rent that was due on April 15, 2012, May 01, 2012, or May 15, 2012. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay $3,600.00 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 on May 08, 2012 the female Tenant was personally served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by May 08, 2012, pursuant to section 46 of the *Act.*

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 did not receive the Notice until May 08, 2012, I find that the earliest effective date of the Notice was May 18, 2012.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier that 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 May 18, 2012.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving 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.

As the Tenant did not vacate the rental unit by May 18, 2012, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between May 15, 2012 and May 31, 2012, I find that the Landlord has been duly compensated for that period.

On the basis of the Agent for the Landlord's observations that the Tenant's vehicle was at the rental unit on June 03, 2012 and in the absence of evidence to the contrary, I find that the Tenant retained possession of the rental unit until at least June 03, 2012.   I therefore find that the Tenant must compensate the Landlord for the three days in June that the Tenant remained in possession of the rental unit, at a daily rate of $80.00, which equates to $240.00.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit made it difficult, if not impossible for the Landlord to find new tenants for the period between June 04, 2012 and June 15, 2012. I therefore find that the Tenant must compensate the Landlord for unpaid rent or loss of revenue experienced between June 04, 2012 June 15, 2012, in the amount of $960.00.

I decline to award compensation for any period after June 15, 2012, as I find it entirely possible that the Landlord may be able to find new tenants for June 15, 2012. The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for rent/loss of revenue for any period after June 15, 2012.

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.

Conclusion

I hereby 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 $4,850.00, which is comprised of $4,800.00 in unpaid rent/loss of revenue 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 $4,850.00. 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: June 11, 2012.

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Residential Tenancy Branch