



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled 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, 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.

The agent for the landlord provided affirmed testimony that on June 20, 2012, at approximately 7 p.m., he and the landlord personally served copies of the Application for Dispute Resolution and Notice of Hearing to the tenant, at the rental unit.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matter

The tenant applied to cancel the Notice to End Tenancy; the landlord confirmed receipt of Notice of the tenant's hearing. The hearing commenced at 10:30 a.m. and at 10:41 a.m., when the tenant had not yet attended the hearing, the tenant's application was then dismissed and the hearing was ended.

The landlord's application was amended to include a claim for unpaid July, 2012, rent in the sum of \$1,850.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

The tenancy commenced on May 1, 2012; rent is \$1,850.00 due on the first day of each month. At the start of a previous tenancy a security and pet deposit in the sum of \$900.00 each was paid. A copy of the current signed tenancy agreement was supplied as evidence.

The landlord stated that at the rental unit on June 14, 2012, at 7:30 p.m. a Ten (10) Day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 24, 2012, was personally served to the tenant. The landlord's agent was present as a witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,850.00 for June, 2012, rent within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant remains in the rental unit and has not paid July, 2012, rent in the sum of \$1,850.00; June rent remains unpaid.

Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on June 24, 2012, pursuant to section 46 of the Act.

Section 46 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. The tenant applied to cancel the Notice and failed to attend this hearing in support of his application; his application has been dismissed.

In the absence of any evidence that the tenant has paid rent owed I find, pursuant to section 46(5) of the Act, that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$3,700.00 for June and July, 2012, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee he has paid, from the tenant, for the cost of this Application for Dispute Resolution.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security and pet deposits in the amount of \$1,800.00, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to 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 \$3,750.00, which is comprised of unpaid June and July, 2012, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security and pet deposit in the amount of \$1,800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,950.00**. 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 final and binding on the parties, unless otherwise provided under the Act, and 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: July 10, 2012.

Residential Tenancy Branch