



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, 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 requested 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 tenant applied to cancel a 10 Day Notice to End Tenancy and to recover filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process.

Preliminary Matters

The landlord named both co-tenants as respondents. Only the female tenant applied to dispute the Notice.

At the start of the hearing the landlord provided affirmed testimony that each of the tenants was served with the Notice of hearing package and application via registered mail sent on July 13, 2012. Tracking numbers for each Canada Post registered mail package were supplied as evidence. The female tenant attended the hearing and initially disputed receipt of the registered mail. The female tenant then agreed that she understood the landlord's claim and that she had applied to dispute the Notice as they required more time to move.

The tenant testified that she served the landlord with only the Notice of Hearing; the application.

I determined, based on the acknowledgement of the tenant that the tenants had been sufficiently served with Notice of the hearing. The male tenant is deemed to have been served with Notice of the hearing, effective the 5th day after mailing. The female tenant acknowledged the contents of the landlord's application and agreed to proceed with the hearing.

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?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced on May 15, 2011, rent is \$1,150.00 per month, due on the first day of each month. A deposit in the sum of \$575.00 was paid on April 29, 2011.

The tenant acknowledged receipt of a 10 Day Notice to End Tenancy for Unpaid Rent that given to her on July 3, 2012, via personal delivery.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,650.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice; July 13, 2012, unless the tenants filed an Application for Dispute Resolution within five days.

The tenant agreed that the landlord is owed \$500.00 for June rent and that July rent in the sum of \$1,150.00 has not been paid.

Analysis

Based on the acknowledgement of the tenant, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on July 13, 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 female tenant disputed the Notice but did not serve the landlord with a copy of the application; therefore her application is dismissed. Further, the effective date of the Notice has passed.

The tenants have not paid the rent owed. Therefore, pursuant to section 46(5) of the Act, I find that the tenants 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 tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$1,650.00 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 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$575.00, 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 tenants. This Order may be served on the tenants, 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 \$1,700.00, which is comprised of \$1,650.00 in 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 deposit in the amount of \$575.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,125.00**. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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 30, 2012.

Residential Tenancy Branch