



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenants with the Notice of Hearing documents by registered mail sent June 16, 2012.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent for the month of June, 2012?

Background and Evidence

This tenancy started April 1, 2012. Monthly rent is \$1,400.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$700.00 at the beginning of the tenancy.

The Landlord testified that the Tenants have been late paying rent every month since the tenancy began. The Tenant stated that she had May's rent available on time, but the Landlord was not available to accept it until May 2, 2012.

The Landlord stated that he issued a Notice to End Tenancy for Unpaid Rent on June 5, 2012 for \$1,400.00 in unpaid rent that was due on June 1, 2012 (the "Notice"), and that he handed it to the female Tenant on June 5, 2012.

There was no copy of the Notice on the file, but the Landlord testified that he provided one in evidence when he filed his Application for Dispute Resolution, along with copies of a notice to end tenancy that he issued in April, 2012. I asked the Landlord and the Tenants to confirm what was contained on the Notice and they did so. Based on the

testimony of both parties, I am satisfied that the Notice meets the requirements of Section 52 of the Act.

The female Tenant acknowledged that she received the Notice on June 5, 2012, and stated that she paid \$1,000.00 of the rent on the same day. The female Tenant stated that she did not file an application to cancel the Notice because she paid the remainder of the rent on June 12, 2012.

The female Tenant testified that she has had troubles with her bank and that she could not provide the Landlord with cheques for rent because of the bank trouble. She stated that she had to pay cash and that the Landlord was not always home or available on the first of each month to accept rent. The Landlord testified that he was always available on the first of each month.

The Landlord acknowledged that he received a cheque for \$400.00 from a third party on June 12, 2012. The Landlord filed his Application for Dispute Resolution the next day.

The Landlord asked for an Order of Possession effective July 14, 2012.

Analysis

It is important to note that the Tenants stated that they were not provided enough opportunity to be heard during the Hearing. I explained to the Tenants several times during the Hearing that the Act does not allow for personal circumstances with respect to the payment of rent. Rent must be paid when it is due and the onus is on the Tenants to ensure that it is paid when it is due.

I accept that the Landlord served the Tenants with the Notice to End Tenancy by handing the Notice to the female Tenant on June 5, 2012. June rent was paid in full on June 12, 2012, but I am satisfied that this did not reinstate the tenancy. The Landlord filed an Application for Dispute Resolution seeking an Order of Possession on June 13, 2012, and served the Tenants with his Application. I find there was no intent on the Landlord's part to reinstate the tenancy when the third party paid the outstanding rent on June 12, 2012.

Section 26 of the Act requires tenants to pay rent when it is due unless they have a right under the Act to deduct all or a portion of the rent. In this case, the Tenants had no right under the Act to do so. It is the Tenants' responsibility to pay rent when it is due, not the Landlord's to pick it up or track it down. The Tenants could have provided a money order or certified cheque rather than cash, and could have left it in the Landlord's mail box on the first day of each month.

The Tenants did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Pursuant to the provisions of Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on June 15, 2012. The Tenants are overholding and the Landlord is entitled to an immediate Order of Possession, but asked for the Order to be **effective July 14, 2012**.

The Landlord's application for a Monetary Order for unpaid rent for the month of June, 2012 is dismissed, as \$1,400.00 has already been paid.

The Landlord has been successful in his application and is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may deduct the cost of the filing fee from the security deposit. The remainder of the security deposit in the amount of **\$650.00** remains available on application by either party and must be administered in accordance with the provisions of the Act.

Conclusion

I hereby provide the Landlord an Order of Possession effective **1:00 p.m., July 14, 2012**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may deduct **\$50.00** from the security deposit in satisfaction of recovery of the filing fee. The remainder of the security deposit in the amount of **\$650.00** remains available on application by either party and must be administered in accordance with the provisions of the Act.

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: July 05, 2012.

Residential Tenancy Branch