



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPC, OPB, MNR, 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, an Order of Possession for Cause, an Order of Possession for breaching an agreement; a monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of 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 the Application for Dispute Resolution, the Notice of Hearing, and a package of evidence were placed through the door of the rental unit on July 14, 2012. The Witness stated that he witnessed service of the documents. The Tenant acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession; 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 March 01, 2011; that the Tenant is required to pay monthly rent of \$750.00; and that the Tenant has not paid rent for July or August of 2012. The Landlord contends the rent is due by the first day of each month and the Tenant contends it is due by the last Wednesday of the previous month.

The Landlord and the Tenant agree that the parties recently agreed that the male living with the Tenant would pay an additional \$100.00 in rent but the Landlord is not seeking compensation for that amount at this hearing.

The Landlord stated that on July 02, 2012 he personally served a Ten Day Notice to End Tenancy for Unpaid Rent to "Dave", who lives with the Tenant. The Landlord stated that the Notice to End Tenancy he served was dated July 02, 2012 and had a declared effective date of July 12, 2012. The Landlord stated that he retained a copy of the Notice to End Tenancy that was served to the Tenant; that the copy he retained was not dated; that he inadvertently dated his copy July 09, 2012; and that he subsequently corrected that date to July 02, 2012.

The Tenant stated that "Dave" is an adult who lives at the rental unit. She acknowledged that she received this Notice to End tenancy from Dave sometime in early July. She stated that the Notice to End Tenancy she received was dated July 02, 2012 and had a declared effective date of July 12, 2012.

The Landlord stated that a One Month Notice to End Tenancy for Cause, which had a declared effective date of July 31, 2012, was personally served to "Dave" on June 30, 2012. The Tenant stated that she received this Notice to End Tenancy through her door on July 27, 2012.

Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$750.00. Although the parties cannot agree on the date the rent is due, I can conclude that it is due not later than the first 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 by July 01, 2012. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$750.00 in outstanding rent to the Landlord for July of 2012.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. Based on the undisputed evidence presented at the hearing, I find that on July 02, 2012 an adult male who lives with the Tenant was personally served with a Ten Day Notice to End Tenancy, pursuant to section 46 of the *Act*. I therefore find this Notice was served in accordance with section 88(e) 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. 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 ended on the effective date of the Notice, which was July 12, 2012. On this basis I find the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit by July 12, 2012, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she has already been ordered to pay rent for the period between July 13, 2012 and July 31, 2012, I find that the Landlord has been duly compensated for that period. I also find that the Tenant must compensate the Landlord for the two days in August that she retained possession of the rental unit, at a daily rate of \$24.19, which equates to \$48.38.

As the Landlord has not claimed compensation for loss of revenue and I have no evidence to show that the Tenant will remain in the rental unit after today, I find that I am unable to award further compensation for the month of August. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for unpaid rent/loss of revenue if the Tenant does not vacate the rental unit by August 03, 2012.

As I have determined that the Landlord is entitled to an Order of Possession pursuant to section 46 of the *Act*, I find that I do not need to determine whether the Landlord is entitled to an Order of Possession for any other reason.

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.

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 \$824.19, which is comprised of \$774.19 in unpaid rent 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 \$824.19. 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: August 02, 2012.

Residential Tenancy Branch