



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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, 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.

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.

At the outset of the hearing the Tenant provided the legal spelling of his first name, which is different from the spelling on the Application for Dispute Resolution. With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct spelling of the Tenant's first name.

The Agent for the Landlord applied to amend the Application for Dispute Resolution by removing the name of the Applicant and adding her name as the Applicant. The Agent for the Landlord stated that this rental unit was sold on August 31, 2012; that the Applicant named on the Application for Dispute Resolution was an agent for the former landlord; and that she is an agent for the current Landlord. The Tenant stated that he believes the Agent for the Landlord is now his landlord and he did not oppose the application to amend the Application for Dispute Resolution. The Application for Dispute Resolution has therefore been amended to reflect the change in ownership.

The Agent for the Landlord presented no testimony or evidence to show that she is representing the former landlord in this matter.

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include a claim for rent owed for September of 2012. As it was reasonable for the Tenant to assume that the Application for Dispute Resolution would include a claim for all rent that owed at the time of the dispute resolution hearing, I amended the Application for Dispute Resolution to include a claim for unpaid rent from September of 2012.

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; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on June 01, 2012; that the Tenant lived in a different rental unit in the same residential complex before he moved into this rental unit; that the Tenant paid a security deposit of \$390.00; that the Tenant was required to pay monthly rent of \$780.00 by the first day of each month; that the Tenant did not pay \$100.00 of the rent that was due for July of 2012; that the Tenant did not pay any rent for August of 2012; that the Tenant has not paid any rent for September of 2012; and that the rental unit was sold to the current Landlord on August 31, 2012.

The Agent for the Landlord stated that she understands that an agent for the former landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on July 10, 2012. She stated that this understanding was based on the declaration on the Application for Dispute Resolution, which declares that the Notice was posted on July 10, 2012. The Tenant stated that he found the Notice to End Tenancy on the door of the rental unit on July 20, 2012.

An unsigned copy of the Ten Day Notice to End Tenancy for Unpaid Rent was submitted as evidence. The Agent for the Landlord stated that she was not in possession of a copy of the Notice to End Tenancy, but she believes the Notice to End Tenancy that was submitted in evidence is a copy of the Notice to End Tenancy that is the subject of this dispute. The Tenant stated that he is in possession of the Notice to End Tenancy that he located on his door on July 20, 2012.

The Tenant stated that the Notice to End Tenancy that he found posted on his door was dated July 20, 2012 declared that he must vacate the rental unit by July 20, 2012. This is consistent with the information on the Notice to End Tenancy that was submitted in evidence. The Tenant stated that the Notice to End Tenancy that he found posted on his door was signed by the agent for the former landlord. The Notice to End Tenancy that was submitted in evidence is not signed.

Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant had a tenancy agreement with the former landlord that required the Tenant to pay the former landlord monthly rent of \$780.00 on July 01, 2012 and \$780.00 on August 01, 2012. As

there is no evidence that the Tenant was obligated to pay rent to the current Landlord on July 01, 2012 and August 01, 2012, and there is no evidence that the former Landlord has authorized the current Landlord to collect this debt on behalf of the former Landlord, I find that the Landlord has failed to establish that the Tenant owes the current Landlord rent for July or August of 2012. I therefore dismiss the current Landlord's claim for compensation for unpaid rent for July and August of 2012.

The Tenant does not dispute that he has not paid rent for July or August of 2012. The former Landlord retains the right to file an application for compensation for unpaid rent for these months.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence presented at the hearing, I find that a Ten Day Notice to End Tenancy, issued pursuant to section 46 of the *Act*, was posted on the door of the rental unit, which directed the Tenant to vacate the rental unit by July 20, 2012. On the basis of the testimony of the Tenant, I find that the copy of the Notice to End Tenancy he received was signed by an agent for the former Landlord. As the Tenant acknowledged that rent had not been paid for August of 2012, I find that the former Landlord had the right to serve this Notice to End Tenancy, pursuant to section 46 of the *Act*.

On the basis of the testimony of the Tenant, I find that this Notice to End Tenancy was received on August 20, 2012. In the absence of testimony from the individual who actually posted the Notice to End Tenancy, I find that the Landlord has submitted insufficient evidence to establish that the Notice to End Tenancy was posted on August 10, 2012. Although the agent for the former Landlord indicated on the Application for Dispute Resolution that the Notice to End tenancy was posted on August 20, 2012, I find that this declaration could be an administrative error, given that the Notice to End Tenancy dated August 20, 2012.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant received this Notice on August 20, 2012, I find that the earliest effective date of the Notice was August 30, 2012.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than 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 August 30, 2012.

Section 46 of the *Act* stipulates that a tenancy 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 ended on August 30, 2012. On this basis I find that the current Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on August 30, 2012, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As the Tenant was obligated to pay rent for August to the former Landlord, I find that the current Landlord is not entitled to compensation for rent for any part of August of 2012. I find that the Tenant must compensate the Landlord for the ten days in September that he has remained in possession of the rental unit, at a daily rate of \$26.00, which equates to \$260.00. As ownership of the rental unit had been transferred to the current Landlord prior to September 01, 2012, I find that any rent owed for September should be paid to the current Landlord.

As there is no evidence that the current Landlord paid the fee for filing the Application for Dispute Resolution and there is no evidence that the former Landlord has authorized the current Landlord to collect the filing fee from the Tenant on behalf of the former Landlord, I find that the current Landlord is not 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 \$260.00, for unpaid rent. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the Tenant's security deposit in full satisfaction of the monetary claim.

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: September 10, 2012.

Residential Tenancy Branch