



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, 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, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The male Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on August 10, 2012. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

At the outset of the hearing the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent for September of 2012. As it would be reasonable for the Tenant to assume that the Landlord is seeking to recover all the rent that is owed, the Application for Dispute Resolution has been amended to include a claim for rent from September.

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; 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 male Agent for the Landlord stated that this tenancy began on March 01, 2008; that during the latter portion of the tenancy the Tenant was required to pay monthly rent of \$1,130.00 by the first day of each month; and that the Tenant paid a security deposit of \$525.00 on February 08, 2012.

The male Agent for the Landlord stated that the Tenant did not pay any rent for July, August or September of 2012. He stated that the Tenant paid \$800.00 in July, which was applied to rent owed for May and June of 2012.

The male Agent for the Landlord stated that he put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of August 12, 2012, on the door of the rental unit on August 02, 2012. The Notice declared that the Tenant owed \$3,360.00 in rent that was due on August 01, 2012.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,130.00 during the latter portion of the tenancy, which was due by 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 has not paid any rent for July, August, or September of 2012. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay the \$1,130.00 that was due on July 01, 2012 and \$1,130.00 that was due on August 01, 2012.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, which directed the Tenant to vacate the rental unit by August 12, 2012, pursuant to section 46 of the *Act*, was posted on the door of the rental unit on August 02, 2012.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on August 05, 2012.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on August 05, 2012, I find that the earliest effective date of the Notice was August 15, 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 15, 2012.

Section 46 of the *Act* stipulates that a tenant 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 15, 2012. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on February 18, 2011, 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 he has already been ordered to pay rent for the period between August 15, 2012 and August 31, 2012, I find that the Landlord has been compensated for that period. I also find that the Tenant must compensate the Landlord for the 11 days in September that he remained in possession of the rental unit, at a daily rate of \$37.67, which equates to \$414.37. I have not awarded rent for any other days in September as there is no evidence the Tenant remained in the rental unit after September 11, 2012.

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 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 \$2,724.37, which is comprised of \$2,674.37 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. As requested at the hearing, I authorize the Landlord to retain the security deposit of \$525.00 plus interest of \$7.12, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,192.25. 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: September 12, 2012.

Residential Tenancy Branch