



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 Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail, on August 22, 2012. The Agent for the Landlord cited a Canada Post tracking number 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 hearing the Agent for the Landlord asked that the Application be amended to include a claim for all the rent that is currently owed. I find it reasonable for the Tenant to conclude that the Landlord would seek all of the rent money that is currently owed at this hearing and I therefore amend the Application accordingly.

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 Landlord submitted a copy of a tenancy agreement which indicates that the Landlord and the Tenant entered into a fixed term tenancy agreement that began on July 01, 2012; that the fixed term of the tenancy agreement ends on June 30, 2013; and that the Tenant is required to pay monthly rent of \$1,025.00 by the first day of each month.

The Agent for the Landlord stated that the Tenant did not pay any rent for August or September of 2012.

The Agent for the Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of August 18, 2012, on the door of the rental unit on August 09, 2012. The Notice declared that the Tenant owed \$1,025.00 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 requires the Tenant to pay monthly rent of \$1,025.00 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 August or September of 2012. As he was required to pay rent on August 01, 2012, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,025.00 in outstanding rent for August.

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 Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on August 09, 2012, which directed the Tenant to vacate the rental unit by August 18, 2012, pursuant to section 46 of the *Act*.

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 12, 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 is deemed to have received this Notice on August 12, 2012, I find that the earliest effective date of the Notice was August 22, 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 22, 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 22, 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 August 22, 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 he has already been ordered to pay rent for the period between August 22, 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 24 days in September that he remained in possession of the rental unit, at a daily rate of \$34.16, which equates to \$819.84.

I have not awarded compensation for the full month of September, as I cannot be certain that the Tenant will not vacate by the end of today. The Landlord has not made an application for lost revenue.

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 \$1,894.84, which is comprised of \$1,844.84 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 \$1,894.84. 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 24, 2012.

Residential Tenancy Branch