



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted affirmed testimony that indicated the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on July 15, 2014 registered mail. Canada Post receipts were provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on July 20, 2014, five days after they were mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord testified that when they took over management of this property on March 1, 2014, the Tenant had already been an existing tenant. The Landlord stated that the Tenant's tenancy agreement market value rent is \$667.00 and her current subsidized rent is \$140.00 payable on the first of each month. No security deposit was required to be paid by the Tenant.

The Landlord submitted that when the Tenant failed to pay the accumulated unpaid rent of \$740.00 a 10 Day Notice to end tenancy was mailed to her on May 13, 2014, as per

the copy of the Notice provided in the Landlord's evidence. The Landlord stated that since serving the Notice to the Tenant she has made the following two payments: \$140.00 on June 11, 2014 and \$1,020.00 paid on July 31, 2014; which brought the Tenant's account current to August 31, 2014. The Landlord submitted that when each payment was received the Tenant was issued a receipt stating the money was accepted for "use and occupancy" only and the Tenant was provided an explanation of what use and occupancy meant.

The Landlord argued that the Tenant has now failed to pay anything towards September 2014 occupancy or rent; therefore, they are still seeking an Order of Possession and loss of September 2014 rent.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on May 18, 2014, five days after it was mailed, and the effective date of the Notice is **May 28, 2014**, in accordance with section 90 of the Act.

The evidence supports that the Tenant did not pay the full amount owed within the required five day period; rather, she waited until July 31, 2014, 69 days after the Notice is deemed to have been received, before paying the amount owed. Therefore, as payment was accepted for "use and occupancy only" the tenancy was not reinstated and the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

As noted above this tenancy ended **May 28, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for September 2014, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession. The Landlord is required to mitigate their loss and work to find replacement tenants as soon as possible. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the period of September 1 to 5, 2014 at a daily rate of \$4.67 totaling **\$23.35**. If the Landlord suffers further loss of rent they are at liberty to file another application.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$73.35** (\$23.35 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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 02, 2014

Residential Tenancy Branch

