



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing was convened after an Interim Decision was issued August 25, 2014 in response to the Landlord's application for Direct Request filed on August 13, 2014. The Landlord filed seeking an Order of Possession and a Monetary Order for unpaid rent.

The hearing October 23, 2014, was conducted via teleconference and was attended by both Landlords who provided affirmed testimony that they personally served the Tenant with copies of the August 25, 2014 Interim Decision and the Notice of Hearing Document the same day they received them in the mail.

Based on the submissions of the Landlords, I find the Tenant was sufficiently served Notice of this proceeding, pursuant to section 89 of the Act, and I proceeded in absence of the Tenant.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to an Order of Possession?
2. Have the Landlords proven entitlement to a Monetary Order?

Background and Evidence

The Landlords testified that in April 2011 they agreed to rent their two bedroom basement suite to the Tenant and his friend. The Tenant demanded that they have separate written tenancy agreements for each tenant. The Landlord agreed and entered into a month to month tenancy with the Tenant that commenced on April 1, 2011. The written tenancy agreement indicated the Tenant was required to pay rent of \$400.00 and the Tenant paid a security deposit of \$200.00.

The Landlords confirmed that rent was payable no later than the first of each month and they had signed an Intent to Rent form so the Tenant's rent would be paid directly to the Landlord. The Landlords submitted that sometime around June 2013 the Tenant's

roommate moved out and the Tenant verbally agreed to pay the \$800.00 monthly rent. Then the Tenant's girlfriend moved into the unit and she was paying the Landlords directly and was not having her Income Assistance payments issued to the Landlords. The Tenant's girlfriend has since moved out of the unit and the Landlords stated that the Tenant now owes them \$730.00 in past due rent.

The Landlords stated that they had personally served the Tenant a 10 Day Notice for unpaid rent on July 28, 2014 and a 1 Month Notice for Cause was personally served to the Tenant on August 30, 2014, along with a letter explaining why the Tenant would be evicted. The Landlords confirmed that they have not been served any paper that would indicate the Tenant had filed to dispute either notice.

Analysis

The Landlords' initial application claimed for unpaid rent of \$330.00 that was due July 1, 2014. I find the Landlords' evidence to be lacking with regards to the written tenancy agreement, which indicates rent is payable in the amount of \$400.00 per month and not \$800.00 per month. Furthermore, there was insufficient evidence to prove if and when the Landlords entered into a subsequent tenancy agreement with the Tenant and/or the Tenant's girlfriend. Therefore, I find there to be insufficient evidence to substantiate the Landlords' request for a monetary order for unpaid rent and the claim is dismissed, without leave to reapply.

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 received the 10 Day Notice on July 28, 2014, and the effective date of the Notice is August 7, 2014. The Tenant neither paid the rent in full nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **August 7, 2014**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the Act.

When a tenant receives a 1 Month Notice to end tenancy for Cause, they have (10) days to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 1 Month Notice on August 30, 2014, and the effective date of the Notice is September 30, 2014. The Tenant not disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **September 30, 2014**, and must vacate the rental unit to which the notice relates pursuant to section 47(5) of the Act.

Based on the above, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice, **September 30, 2014**. Accordingly, I grant the Landlords' request for an Order of Possession.

Conclusion

The Landlords have 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 request for a Monetary Order is HEREBY DISMISSED, without leave to reapply.

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: October 23, 2014

Residential Tenancy Branch

