



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the Landlord withdrew the application for a monetary Order, as all of the outstanding rent has now been paid.

The Landlord stated that on July 29, 2016 she personally served the Tenant with the Application for Dispute Resolution and the Notice of Hearing. 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.

On August 02, 2016 the Landlord submitted nine pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on August 03, 2016. In the absence of evidence to the contrary, I find that this evidence was served to the Tenant and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to retain any portion of the security deposit?

Background and Evidence

The Landlord stated that:

- this tenancy began on August 01, 2015;

- the Tenant agreed to pay monthly rent of \$1,250.00 by the first day of each month;
- the Tenant did not pay the rent that was due for July until July 28, 2016;
- when the Tenant paid rent for July she was told the tenancy would not continue;
- the Tenant paid \$500.00 in rent for August on August 03, 2016;
- the Tenant paid \$500.00 in rent for August on August 06, 2016;
- the Tenant paid \$250.00 in rent for August and an additional \$30.00 on August 11, 2016;
- when the Tenant paid rent for August she was told the tenancy would not continue; and
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which had a declared effective date of July 27, 2016, was personally served to the Tenant on July 18, 2016.

Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,250.00 by the first day of each month, and that the Tenant did not pay the rent that was due on July 01, 2016 until July 28, 2016.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the Tenant on July 18, 2016.

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 Ten Day Notice to End Tenancy on July 18, 2016 I find that the earliest effective date of the Notice was July 28, 2016.

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 Ten Day Notice to End Tenancy was July 28, 2016.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant disputed the Notice to End Tenancy or that she paid the overdue rent within five days of receiving the Notice. I therefore find, pursuant to section 46(5) of the *Act*, that the Tenant accepted that the tenancy ended and I grant the landlord an Order of Possession. As the rent has been paid for August, this Order of Possession will be effective on August 31, 2016.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on August 31, 2016. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim of \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$50.00 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: August 16, 2016

Residential Tenancy Branch