



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for 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 copies of the Application for Dispute Resolution and Notice of Hearing were sent on July 30, 2009 to the Tenant via registered mail at the address noted on the Application. The Landlord stated that this mail was returned as unclaimed. The Landlord testified that on September 4, 2009 she met with the tenant at the rental building and personally served her with notice of the hearing and the application for dispute resolution. The Landlord stated that the Tenant was offered the use of the Landlord's office telephone so that she could participate in the hearing. The Landlord stated that the tenant support worker would make the telephone available to the tenant.

These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent?

Is the Landlord entitled to an Order of possession?

Is the Landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement requires the Tenant to pay monthly subsidized rent of \$255.00. The tenancy commenced in March 1997.

The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of July 21, 2009, was personally served to the Tenant on July 8, 2009 at 2:57 p.m. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$864.00 within five days after the Tenant is assumed to have received the Notice. The Notice also indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the

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rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within five days.

The Landlord stated that the Tenant still owes \$494.00. The Tenant failed to pay \$155.00 owed for May, 2009 and did not pay rent from June to September 2009. On July 21, 2009 the Tenant paid \$200.00 and on September 15, 2009 the Tenant paid \$330.00. Receipts for each of these payments indicated that payments were accepted for use and occupancy only.

The landlord testified that they do not wish to evict the Tenant and have made a repayment agreement with the Tenant. However, the Landlord wished to proceed with the hearing and stated that the Tenant had indicated she would attend this hearing. The Landlord testified that if the Tenant observes the repayment agreement any Order of possession issued will not be enforced. Details of the agreement were not provided.

Analysis

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 July 8, 2009 I find that the earliest effective date of the Notice is July 18, 2009. The Notice indicates an effective vacancy date of July 21, 2009.

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on July 21, 2009, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five (5) 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. In the circumstances before me I have no evidence that the Tenant exercised both of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective, as requested by the Landlord, on September 30, 2009 at 1:00 p.m.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$494.00 and that the Landlord is entitled to compensation in that amount.

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



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Conclusion

The Landlord has been granted an Order of Possession that is effective **September 30, 2009 at 1:00 p.m.** 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 \$544.00, which is comprised of \$494.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant the Landlord a monetary Order in that amount. 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 16, 2009.

Dispute Resolution Officer