



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD

Introduction

This hearing was scheduled 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 retain all or part of the security deposit. The Agent for the Landlord withdrew the application to retain the security deposit as he stated that the Landlord and the Tenant agreed that the Landlord could retain the security deposit in exchange for a portion of the rent that was due for July of 2009.

The Agent for the Landlord stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant, in the presence of the Landlord, on September 27, 2009. In the absence of evidence to the contrary, I find that these documents 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

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 55, and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on February 15, 2009; that the Tenant was initially required to pay monthly rent of \$925.00 on the first day of each month; and that the rent was reduced to \$750.00 per month on March 01, 2009.

The Agent for the Landlord stated that the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of August 26, 2009, on the door of the rental unit on August 26, 2009. The Notice declared that the Tenant owed

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\$750.00 in rent that was due on August 01, 2009. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Agent for the Landlord stated that the Tenant did not pay rent when it was due on August 01, 2009 or September 01, 2009, leaving an outstanding balance of \$1,500.00. He stated that \$300.00 was paid towards the outstanding debt on September 25, 2009, for which a receipt that declared the rent was being accepted for "use and occupancy only" was issued. A copy of this receipt was submitted in evidence. The Agent for the Landlord declared that the rent was still in arrears of \$1,200.00 after this payment was made.

The Agent for the Landlord stated that \$450.00 was paid towards the outstanding debt on September 30, 2009, for which a receipt that declared the rent was being accepted for "use and occupancy only" was issued. A copy of this receipt was submitted in evidence. The Agent for the Landlord declared that the rent was still in arrears of \$750.00 after this payment was made. He stated that rent of \$750.00 was not paid when it was due on October 01, 2009, leaving rent owing in the amount of \$1,500.00.

The Agent for the Landlord stated that \$1,200.00 was paid towards the outstanding debt on October 03, 2009, for which a receipt that declared the rent was being accepted for "use and occupancy only" was issued. A copy of this receipt was submitted in evidence. The Agent for the Landlord declared that the rent was still in arrears of \$300.00 after this payment was made. He stated that \$600.00 was paid towards the outstanding debt on October 31, 2009, for which a receipt that declared the rent was being accepted for "use and occupancy only" was issued, leaving a credit of \$300.00. A copy of this receipt was not submitted in evidence.

The Agent for the Landlord stated that rent of \$750.00 was not paid when it was due on November 01, 2009. After applying the \$300.00 credit, he stated that the Tenant still owes rent in the amount of \$450.00.

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 currently requires the Tenant to pay monthly rent of \$750.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

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Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay rent of \$750.00 when it was due on August 01, 2009; that the Tenant did subsequently pay the rent that was due for August; that the rent was accepted for the purposes of “use and occupancy only”; and that the Tenant still owes \$450.00 in rent for the month of November of 2009. As she is required to pay rent pursuant to section 26(1) of the Act, I find that the Tenant must pay \$450.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on August 26, 2009 because rent was not paid when it was due on August 01, 2009.

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 29, 2009.

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 August 29, 2009, I find that the earliest effective date of the Notice is September 08, 2009.

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 September 08, 2009.

Section 46(4) 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 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 September 08, 2009.

As I have found that the Tenant must pay rent for November of 2009, I hereby grant the Landlord an Order of Possession that is effective on November 30, 2009.



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Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on November 30, 2009. 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 \$450.00, for unpaid rent. Based on these determinations I grant the Landlord a monetary Order for the amount of \$450.00. 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: November 09, 2009.

Dispute Resolution Officer