



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent.

The hearing was conducted via teleconference and was attended by the landlord, her agent, and the tenant.

The landlord had arranged for a witness who called in at the start of the hearing. I directed the witness to be available for the duration of the hearing and if we needed his testimony we would call him in to the hearing. We did not need the witness's testimony and he was not called into 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; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on November 27, 2010 for a month to month tenancy beginning on December 1, 2010 for the monthly rent of \$1,475.00 due on the 1st of each month and a security deposit of \$737.50 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 7, 2011 with an effective vacancy date of September 17, 2011 due to \$1,475.00 in unpaid rent.

Both parties agree the tenant has not paid rent in the full rent owed for the months of August, September, and October 2011. The landlord testified the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on September 7, 2011. While the tenant does not believe she received the Notice on September 7, 2011 she does confirmed that she would have received it shortly after this date.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The tenant testified that she had spoken with the landlord towards the end of July 2011 and the landlord had agreed, verbally, to wait until the tenant received some sort of large settlement and that the landlord would not seek rent until such time. The landlord testified that she made no such agreement with the tenant.

The tenant went on to testified that after she received the 10 Day Notice she again spoke to the landlord who told her that she was only doing this because her husband was making her issue the notice. The tenant took this to mean that everything was ok and that the previous verbal agreement would be honoured.

Analysis

I have reviewed all documentary evidence and accept that the tenant was served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on September 10, 2011 and the effective date of the notice is amended to September 20, 2011, pursuant to Section 53 of the *Act*.

I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*. As the landlord denies entering into an agreement with the tenant to not seek rent until she received a lump sum payment; in the absence of any evidence from the tenant to corroborate such an agreement; and since the tenant did not apply to dispute the Notice, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$4,475.00** comprised of \$4,425.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 20, 2011.

Residential Tenancy Branch