



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause, 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 Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail, at the rental unit on September 16, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (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 Cause; 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 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that this tenancy began on December 01, 2010 and that the Tenant is required to pay monthly rent of \$1,150.00 on the first day of each month.

The Landlord stated that the he personally served the Tenant with a One Month Notice to End Tenancy for Cause on August 31, 2011, which declared that she must vacate the rental unit by September 30, 2011. I have no evidence before me that the Tenant disputed the Notice to End Tenancy.

The Landlord stated that the Tenant still owes \$330.00 in rent from August of 2011 and \$1,150.00 in rent from September of 2011.

The Landlord stated that the Tenant still has possessions in the rental unit but he believes she stopped living in the rental unit on October 03, 2011. The Landlord is seeking compensation for loss of revenue for the month of October, due to the fact she left possessions in the rental unit and he has not, therefore, been able to re-rent the unit.

The Landlord is also seeking compensation for a move-in fee of \$50.00 and a move-out fee of \$50.00.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,150.00 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant received a One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*, on August 31, 2011 which required her to vacate the rental unit prior on, or before, September 30, 2011.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Notice to End Tenancy, I find that the Tenant accepted that the tenancy ended on September 30, 2011, pursuant to section 47(5) of the *Act*.

I find that this tenancy ended on September 30, 2011, pursuant to section 44(1)(a) of the *Act* on the basis of the Notice to End Tenancy that was served by the Landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant abandoned the rental unit on October 03, 2011 when she stopped living in the rental unit, even though she has left some personal property in the rental unit. As the Tenant still has property in the rental unit, I find that the Landlord is entitled to an Order of Possession on the basis of the One Month Notice to End Tenancy for Cause.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant still owes \$330.00 in rent from August of 2011 and \$1,150.00 in rent from September of 2011. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,480.00 in outstanding rent to the Landlord.

As the Tenant did not vacate the rental unit on September 30, 2011, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant remained living in the rental unit until October 03, 2011. I therefore find that the Tenant must compensate the Landlord for

the three days in October that she lived in the rental unit, at a daily rate of \$38.33, which equates to \$114.99.

I decline to consider the Landlord's request for compensation for loss of revenue for the remainder of October of 2011, pursuant to section 59(5)(a) of the *Act*, a move-in fee, or a move out fee because the Application for Dispute Resolution did not provide sufficient particulars of these claims, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of any reference of a claim for loss of revenue from October or move in/move out fees in the Landlord's Application for Dispute Resolution. I find that considering these claims for compensation would be prejudicial to the Tenant, as the Tenant was not clearly advised of the claims. The Landlord retains the right to file another Application for Dispute Resolution in which he claims compensation for loss of revenue, move-in fees, or move-out fees.

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

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. 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 \$1,644.99, which is comprised of \$1,594.99 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,644.99. 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: October 17, 2011.

Residential Tenancy Branch