



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHILLIWACK KIWANIS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee for the Application.

Only the Landlord's agent, T.P., appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

T.P. testified he served the Tenant with the Notice of Hearing and the Landlord's Application on August 28, 2014 by registered mail. Under the Act documents served this way are deemed served five days later. Accordingly, I find the Tenant was duly served as of September 2, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

T.P. testified that the parties entered into a written tenancy agreement dated August 6, 2013. No such agreement was provided in evidence; although, I accepted the undisputed testimony of T.P. as to the terms of the tenancy. Both parties signed the tenancy agreement on August 6, 2013 for a month to month tenancy commencing

August 1, 2013. Rent was payable in the amount of \$480.00 per month payable on the 1st of the month. The tenant paid a security deposit of \$240.00 in August 2013.

The Tenant did not pay the \$480.00 in rent for July 2014. On August 5, 2014 the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

Based on the testimony of T.P., I find that the Tenant was served with the "Notice" on August 5, 2014 by placing it in the Tenant's mail slot at the rental unit. Section 90 of the Act provides that documents served in this manner are deemed served three days later; accordingly, I find the Tenant was served the Notice on August 8, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely August 13, 2014. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant did not pay the outstanding rent, nor did the Tenant apply to dispute the Notice. The Tenant also did not pay rent for August 2014 or September 2014.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$1,490.00 comprised of rent owing in the amount of \$480.00 for July 2014, \$480.00 for August 2014, and

\$480.00 for September 2014 and the \$50.00 fee paid by the Landlord for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, and is granted a Monetary Order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 17, 2014

Residential Tenancy Branch

