



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 was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on August 09, 2014 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were sent to the male Tenant at the rental unit, via registered mail. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the male Tenant did not appear at the hearing.

The Agent for the Landlord stated that only the male Tenant was named in the original Application for Dispute Resolution. She stated that she amended the Application for Dispute Resolution by typing in the name of the female Tenant. I do not have a copy of an amended Application for Dispute Resolution which has the female Tenant's name typed on it. I do have a copy of an amended Application for Dispute Resolution which has the female Tenant's name has been written on it, in hand writing.

The Agent for the Landlord and the Tenant agree that the Tenant picked up a package from the Agent for the Landlord's office on August 23, 2014, which contained a package of evidence and the amended Application for Dispute Resolution. The Agent for the Landlord stated that the amended Application for Dispute Resolution which had the female Tenant's name in typing was in this package. The Tenant stated that the amended Application for Dispute Resolution which had the female Tenant's name in writing was in this package and that she has never been served with the Application for Dispute Resolution which had the female Tenant's name was typed on the Application.

The Tenant stated that she understood she was being named as a Respondent in this matter and I therefore find it reasonable to accept the amendments, even if the female Tenant's name was merely written on the Application.

The Landlord and the female Respondent were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

Preliminary Matter

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include a claim for unpaid rent for September of 2014. As I find it reasonable for the Tenant to conclude that the Landlord would be seeking all of the rent currently due, including rent that accrued after the Application for Dispute Resolution was filed, I granted the application for this amendment.

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began on December 01, 2013
- there is a written tenancy agreement that names both the male and the female Tenant
- the female Tenant moved out of the rental unit in April of 2014
- the male Tenant is still occupying the rental unit
- the female Tenant did not end this tenancy in writing
- the current monthly rent is \$675.00, which is due by the first day of each month.

The Agent for the Landlord stated that rent has not been paid for July, August, or September of 2014.

The Assistant stated that on July 04, 2014 she personally served the male Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of July 17, 2014.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that currently requires the Tenants to pay monthly rent of \$675.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

On the basis of the undisputed evidence, I find that the rent has not been paid for July of 2014. As the Tenants are jointly required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$675.00 in outstanding rent for July.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the male Tenant on July 04, 2014.

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 either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on July 17, 2014. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on July 17, 2014, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between July 17, 2014 and July 31, 2014, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the month of August, in the amount of \$675.00, as the Tenant remained in possession of the rental unit for that month.

As the male Tenant is still in possession of the rental unit, I find that he must pay for the first eight days of September, at a daily rate of \$22.50, which equates to \$180.00.

I am unable to award compensation for the entire month of September, as it is entirely possible that the rental unit will be vacated today. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for unpaid rent/loss of revenue if the Tenants remain in possession of the rental unit.

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

Conclusion

I 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.

The Landlord has established a monetary claim, in the amount of \$1,580.00, which is comprised of \$1,530.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I grant the Landlord a monetary Order for the amount of \$1,530.00. 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: September 08, 2014

Residential Tenancy Branch

