



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPC, OPB, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord's agent said the Landlord's spouse served the Tenant in person on December 7, 2010 with the Application and Notice of Hearing (the "hearing package"). Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This tenancy started on August 10, 2010. Rent is \$650.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$325.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant paid only \$325.00 for rent for September 2010 and as a result, on September 13, 2010, the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 6, 2010. The Landlord's agent said the Tenant wanted the Landlord to use the security deposit to pay the balance of the rent for September 2010 but the Landlord did not agree to do so. The Landlord's agent said the Tenant has not paid any rent since receiving the 10 Day Notice and now has rent arrears for October, November and December 2010.

The Landlord's agent also said that on September 20, 2010, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause by leaving it with the Tenant's adult daughter at the rental unit. The Landlord's agent admitted that the Tenant's daughter does not reside in the rental unit but he said the Tenant's daughter is there every day and the Tenant acknowledged to the Landlord that she received it.



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Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. Section 47(4) of the Act states that a Tenant must apply to dispute a Notice to End Tenancy for Cause **within 10 days of receiving it**. If a Tenant fails to take these steps, then under either section 46(5) or 47(4) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and the Tenant must vacate the rental unit at that time.

I find that the Landlord served the Tenant in person on September 13, 2010 with a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated September 6, 2010. I find that the Tenant has not paid the outstanding rent in full and has not applied to cancel that Notice within 5 days of receiving the Notice.

Section 88 of the Act says that a Notice to End Tenancy may be served by leaving a copy of it at the person's residence **with an adult person who apparently resides with that person**. The Landlord's agent admitted that the Tenant's daughter does not reside with the Tenant but claimed that the Tenant acknowledged to the Landlord that she received it. Section 71(2)(c) of the Act says that the director may make an order "that a document not served in accordance with section 88 or 89 is sufficiently given or served for the purposes of the Act." Based on the evidence of the Landlord, I find that the Tenant received One Month Notice to End Tenancy for Cause dated September 17, 2010 and accordingly, I also find that it was sufficiently served on the Tenant for the purposes of the Act. I further find that the Tenant has not applied for dispute resolution to cancel this Notice.

As a result of the Tenant's failure to cancel either of the Notices served on her (and her failure to pay the rent arrears), I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent the following rent arrears:

September 2010:	\$325.00
October 2010:	\$650.00
November 2010:	\$650.00
December 1 – 22, 2010:	<u>\$461.29</u>
Subtotal:	\$2,086.29

I also find that the Landlord is entitled to a loss of rental income for December 23 – 31, 2010 in the pro-rated amount of \$188.71. I further find that the Tenant did not have the written consent of the Landlord to use the security deposit for rent (as required by s. 21



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of the Act). As the Landlord has been successful in this matter, she is entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$2,325.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: December 22, 2010.

Dispute Resolution Officer