



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 5, 2011. 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. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on September 1, 2002 as a month to month tenancy. Rent is \$637.47 per month payable in advance of the 1st day of each month. A security deposit of \$270.00 was paid in September 2002. The Landlord said the Tenant is living in the rental unit and the Landlord requested an Order of Possession with an effective date as soon as possible.

The Landlord said that the Tenant did not pay \$642.68 of rent for July, 2011 when it was due and as a result, on July 6, 2011 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 6, 2011, on the Tenant's door. The Landlord continued to say that the Tenant has made payments towards the unpaid rent, but as of November first the unpaid rent is \$1,287.80. The Landlord continued to say she received a money order under her door last night for \$647.00 from the Tenant; therefore the unpaid rent at the present time is \$640.80. The Landlord said they issued a receipt in June, 2011 to the Tenant for "use and occupancy only". The Landlord said they have issued a number of 10 day Notices to End Tenancy to the Tenant over the course of the tenancy.

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 pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy three days after it is posted to the door of the unit, or on July 9, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 14, 2011.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent outstanding as at November, 2011, in the amount of \$640.80.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing of unpaid rent in the amount of \$640.80 and the filing fee of \$50.00 for a total of \$690.80.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$690.80 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*.

Residential Tenancy Branch