

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 he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on October 31, 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 prior to the Landlord purchasing the rental unit and then renewed as a verbal agreement with the new owner of the property on April 1, 2011. The tenancy is a month to month tenancy. Rent is \$1,000.00 per month payable in advance of the 1st day of each month. A security deposit of \$475.00 was paid prior to the new owner purchasing the rental unit in April of 2011. The Landlord said he is not sure if the Tenant is living in the rental unit, but there are belongs of Tenant in the unit. The Landlord said the Tenant has not given him written or verbal notice that she is moving out of the unit, but a previous roommate of the Tenant told the Landlord that the Tenant may have moved out. The Landlord requested an Order of Possession with an effective date as soon as possible.

The Landlord said that the Tenant did not pay \$1,000.00 of rent for October, 2011 when it was due and as a result, on October 14, 2011, he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 14, 2011, on the Tenant's door. The Landlord continued to say the Tenant has unpaid rent for November, 2011 of \$1,000.00 as well.

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 five days after mailing a registered mail Notice, or on October 19, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 24, 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 for October, 2011 in the amount of \$1,000.00 and for unpaid rent for November, 2011 in the amount of \$1,000.00, totally an amount of unpaid rent of \$2,000.00.

As the Landlord has been successful in this matter, he is 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 \$2,000.00 and the filing fee of \$50.00 for a total of \$2,050.00.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,050.00 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: November 9, 2011.

Residential Tenancy Branch