



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, FF

Introduction

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

The Landlord served the Tenant in person on November 22, 2008 with a copy of the Application and Notice of Hearing in this matter. Despite being served with the Notice, the Tenant did not call into the teleconference. I find pursuant to s. 89 of the Act that the Tenant was properly served with the hearing package in this matter and the hearing proceeded in her absence.

Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?

Background and Evidence

This month to month tenancy started on September 1, 2008. Rent is \$900.00 per month payable on the 1st day of each month. The Landlord said the Tenant did not pay November rent and as a result, he served her in person on November 7, 2008 with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated November 7, 2008. The Landlord said the Tenant has not paid anything since she was served with the Notice to End Tenancy and is now in arrears of rent for December, 2008.

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 amount set out on the Notice or apply for dispute resolution. If a 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 must vacate the rental unit at that time. Consequently, the Tenant would have had to pay the amount on the

Notice or apply to dispute that amount within 5 days, or no later than November 12, 2008.

I find that the Tenant has not paid the amount indicated on the Notice and has not applied for dispute resolution. Consequently, pursuant to section 46(5) of the Act, she is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, or on November 17, 2008.

The Landlord requested and I find he is entitled to an Order of Possession to take effect immediately or on December 9, 2008. I also find that the Landlord is entitled to recover rent arrears in the amount of \$900.00 for November, 2008 and loss of rental income of \$450.00 for ½ of December, 2008 as well as the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession to take effect December 9, 2008 and a Monetary Order in the amount of **\$1,400.00** 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 filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.