



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 as well as to recover the filing fee for this proceeding.

The Landlord served the Tenant by registered mail on February 7, 2009 with a copy of the Application and Notice of Hearing. According to the Canada Post on-line tracking system, the Tenant received a Notification card on February 10, 2009 but did not pick up the hearing package. I find that the Tenant was properly served pursuant to s. 89 of the Act with the Notice of Hearing and the hearing proceeded in his 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 fixed term tenancy started on November 15, 2008 and was to expire on November 30, 2009. Rent is \$1,100.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$550.00 at the beginning of the tenancy. The Landlord said the Tenant did not pay his January, 2009 rent and as a result on January 15, 2009 the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated January 15, 2009 on the Tenant's door. The Landlord said the Tenant has paid nothing since he was served with the Notice and is now in arrears of rent for February and March, 2009.

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. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on January 18, 2009. 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 January 23, 2009.

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, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice or on January 28, 2009.

The Landlord requested and I find pursuant to s. 55(2)(b) of the Act that she 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 rent arrears for January and February, 2009 in the amount of **\$2,200.00**, pro rated rent for March 1 - 19, 2009 in the amount of **\$674.19**, a loss of rental income for March 20 – 31, 2009 in the amount of **\$425.81** as well as the **\$50.00** filing fee for this proceeding.

Conclusion

An Order of Possession effective 48 hours after service of it on the Tenant and a Monetary Order in the amount of **\$3,350.00** have been issued to the Landlord and 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.