



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MND, MNSD, 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 and to keep the Tenant's security deposit in payment of those amounts.

The Landlord served the Tenant by registered mail on December 24, 2009 with a copy of the Application and Notice of Hearing. According to the Canada Post online tracking system, a notification card was delivered to the rental unit address, however the Tenant refused service of the hearing package. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on June 1, 2007. Rent is \$1,131.00 per month payable in advance on the 1st day of each month. The Landlord had no evidence as to whether the Tenant paid a security deposit and if so, how much.

The Landlord claims that the Tenant did not pay rent for December 2009 when it was due and as a result on December 9, 2009 the Landlord served the Tenant by registered mail with a Notice to End Tenancy for Unpaid Rent and Utilities dated December 9, 2009. The Landlord said that the Tenant paid \$1,130.00 of the outstanding rent on January 6, 2010 and the balance on January 14, 2010 and was given a receipt stating that the payment was accepted for use and occupancy only.

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



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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 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 5 days after it was mailed, or on December 14, 2009. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than December 19, 2009.

I find that the Tenant did not pay the overdue rent by December 19, 2009 and did not apply for dispute resolution to dispute the Notice. 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 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 **\$50.00** 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.

The Landlord's application to keep the Tenant's security deposit is dismissed with leave to reapply. 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: February 03, 2010.

Dispute Resolution Officer