

DECISION

Dispute Codes OPR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding. The Landlord said he served the Tenants with a copy of the Application and Notice of Hearing by registered mail on January 22, 2010. According to the Canada Post online tracking system, a notification card was left for the Tenants but they did not pick up the hearing package(s). I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month to month tenancy started on or about July 1, 2009. Rent is \$750.00 per month payable in advance on the 1st day of each month. The Landlord claims that the Tenants had arrears of rent of \$150.00 for December 2009 and did not pay rent for January 2010 when it was due and as a result, on January 2, 2010 the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated January 2, 2010 by posting it on the rental unit door. The Landlord said that the Tenants have not paid the arrears set out on the Notice in the amount of \$900.00 and now have rent arrears for February and March 2010.

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 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 Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or on January 5, 2010. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than January 10, 2010.

I find that the Tenants have not paid the overdue rent and have 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 Tenants.

The Landlord did not apply for a monetary order for unpaid rent and as a result, he will have to make a separate application for that relief. However, the Landlord is entitled to recover the \$50.00 filing fee he paid for this proceeding and I order pursuant to s. 72 of the Act that he may deduct that amount from the Tenants' security deposit.

Conclusion

An Order of Possession to take effect 48 hours after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants and may be enforced in the Supreme 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: March 08, 2010.

Dispute Resolution Officer