

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.

Issues(s) to be Decided

1. Does the Landlord have grounds 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 August 1, 2009. Rent is \$800.00 per month payable in advance on the 1st day of each month. The Tenant did not pay rent in full for January and February 2010 and as a result, on February 18, 2010 the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 18, 2010. The Tenant has not paid the arrears set out on the Notice in the amount of \$800.00 and is now in arrears of rent for 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. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than February 23, 2010.

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 on March 15, 2010 at 1:00 p.m. I also find that the Landlord is entitled to recover rent arrears in the amount of \$800.00 as well as the \$50.00 filing fee for this proceeding. As the Landlord has a duty to mitigate his damages by trying to re-rent the rental unit as soon as possible, his application for a loss of rental income for March 15–31, 2010 is dismissed with leave to reapply.

Conclusion

An Order of Possession to take effect on March 15, 2010 and a monetary order in the amount of **\$850.00** 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: March 11, 2010.

Dispute Resolution Officer