

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 May 5, 2010 with a copy of the Application and Notice of Hearing (the "hearing package"). Based on the documentary and oral evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

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

Background and Evidence

This tenancy started on June 1, 2009. Rent is \$700.00 per month payable in advance on the 1st day of each month.

The Landlord claims that the Tenant did not pay rent for the months of October, November and December 2009 and January and February 2010 and as a result, on February 2, 2010 the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the rental unit door. The Landlord said that the Tenant has not paid the arrears set out on the Notice and now also has rent arrears for March, April and May, 2010. The Landlord said he believes the Tenant has removed most of her personal possessions from the rental unit but has still left some items there.

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 Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on February 5, 2010. Consequently, the Tenant

would have had to pay the amount on the Notice or apply to dispute that amount no later than February 15, 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 immediately after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears for 5 months (October 2009 to February 2010) as he claimed in his application, however based on the evidence of the rental rate provided by the Landlord I find that he is entitled to recover rent arrears of \$3,500.00 as well as the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession effective immediately and a monetary order in the amount of **\$3,550.00** 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: June 15, 2010.

Dispute Resolution Officer