



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the Landlord's application for an order of possession and a monetary order as compensation for unpaid rent.

The Landlord said he served the Tenant with the Application and Notice of Hearing ("the hearing package") by registered mail on August 16, 2010. Based on the 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.

Issues(s) to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order under the Act?

Background and Evidence

This tenancy started on June 1, 2010. Rent is \$595.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$297.50 on May 19, 2010.

The Landlord said the Tenant did not pay rent for August, 2010 when it was due and as a result on August 2, 2010 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2010. The effective vacancy date on the notice is August 12, 2010. The Landlord said the tenancy agreement has a \$25.00 late fee charge written into it, which he has included in the monetary claim. The Landlord continued to say that the Tenant has not paid September, 2010 rent and has promised to move out, but as of the hearing date the Tenant is living at the rental unit.

The Landlord requested two changes to his application. First, to include the filing fee of \$50.00 for this proceeding into the monetary claim and secondly to keep the security deposit as partial payment of the monetary claim.



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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 the 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.

The Tenant was served the Notice to End Tenancy in person on August 2, 2010, therefore the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 7, 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 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent of \$595.00 for August, 2010 and the late fee for August, 2010 rent of \$25.00, making a total monetary claim of \$620.00.

I find the Landlord's request to amend his application to include the filing fee for this proceeding of \$50.00 and to keep the Tenant's security deposit as partial payment of the unpaid rent are dismissed. The Tenant was not on the conference call to defend against these additional claims and he was not aware of these claims prior to the conference call, therefore I find the proposed amendments to the application are not granted.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$620.00** 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*.
