



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 18, 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. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This tenancy started on August 1, 2009 as a month to month tenancy. Rent is \$1,250.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 in advance of the tenancy in July, 2009.

The Landlord said that the Tenant did not pay \$1,250.00 of rent for July, 2010 when it was due and as a result, on July 9, 2010 he personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 9, 2010. The Landlord said the Tenant has since paid the July and August rent on August 25, 2010. As well the Landlord said the Tenant paid \$250.00 on September 1, 2010 for September, 2010 rent. The Landlord said that there is \$1,000.00 of unpaid rent for September, 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 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.



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Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on July 9, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 14, 2010.

I find that the Tenant did not pay the overdue by July 14, 2010 and did not apply for dispute resolution. Consequently, I find pursuant to s. 55(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 for September, 2010, in the amount of \$1,000.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,000.00
Recover filing fee	<u>\$ 50.00</u>
Balance owing:	\$1,050.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,050.00 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*.
