

## Dispute Codes

Landlord: OPR, MNR,FF  
Tenant: MT, CNR

## Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee for this proceeding from the Tenants.

The Tenants filed seeking to cancel the Notice to End Tenancy for Unpaid Rent and to request more time to make the application.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on September 3, 2010, in accordance with section 89 of the Act. The Tenants confirmed receipt of the Landlord's hearing package.

Service of the hearing documents by the Tenant to the Landlord were not received by the Landlord. The Tenant said the person who serviced the documents was not available to explain why the Landlord did not receive the Tenant's hearing package.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing and in documentary form.

## Issues to be Decided

Landlord:

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Tenants:

1. Are there grounds to cancel the Notice to End Tenancy for Unpaid Rent?
2. Is the Tenant entitled to more time to make the application?

## Background and Evidence

This tenancy started on February 25, 2010. Rent is \$575.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$287.50 on February 25, 2010.

The Landlord said the Tenant did not pay rent for June, 2010 and August, 2010 when it was due and as a result, on August 17, 2010 she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities under the door of the Tenant's rental unit for security reasons, dated August 17, 2010. The Landlord said the Tenant has not paid rent of \$575.00 for each month of September, 2010 and October, 2010. The Landlord continued to say that an arrangement of \$100.00 extra could be added to each month's rent to pay for the unpaid rent of June, 2010. The Landlord said the Tenant paid \$675.00 in July, 2010, but no other payments have been received since.

The Landlord requested an Order of Possession and a Monetary Order for unpaid rent.

The Tenant said that her son would be speaking for her as she just got out of the hospital and she was having trouble speaking. The Tenant's son said the Tenant had been in the Hospital from August 15, 2010 to September 28, 2010 and she paid the rent by post dated cheques, one dated August 1, 2010 and one dated September 1, 2010. The Tenant son said that the Tenant was told these cheques had cleared through her bank account, but they had no documentation of this happening. The Tenant's son agreed that part of the June, 2010 rent and October, 2010 rent was unpaid.

The Landlord said she had not received any post dated cheques from the Tenant and no payments had been made for August and September, 2010.

The Tenant's son continued to say that he thought the 10 Day Notice to End Tenancy was improperly served as it was placed under the door not posted to the door as indicated on the Proof of Service Notice.

## Analysis

Section 88 (g) says a Notice can be served by attaching a copy to the door or other conspicuous place at which the person resides. The 10 day Notice to End Tenancy was placed under the door at the Tenant's rental unit for security reason. I find the Notice was served in a conspicuous place and the service requirements were met by the Landlord.

Section 26 (1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has the right under this Act to deduct all or a portion of the rent.

Section 46(5) 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.

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 August 20, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 25, 2010.

The Tenant's son said he found the 10 Day Notice to End Tenancy August 30, 2010, while the Tenant was in hospital. The Tenant made an application to dispute the Notice on August 30, 2010, but did not serve the hearing package on the Landlord and had no explanation of why it was not served. Given that the Landlord was not served the Tenant's hearing package, I find the Tenant's application is dismissed with leave to reapply.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution within the time limits and serve requirements of the Act. As well the Tenant does not have the right under this Act to deduct all or a portion of the rent. 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 \$475.00 for June, 2010 and \$575.00 for each month of August and September, 2010. I further find that the Landlord is entitled to recover a loss of rental income to October 15, 2010, in the amount of \$278.22 (\$575.00 X 15 of 31 days of October). The Landlord has an obligation to mitigate her damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order pursuant to s. 67 and s. 72 of the Act the Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,625.00
Rent to October 15, 2010	\$ 278.22
Recover filing fee	<u>\$ 50.00</u>
Total:	\$1,953.22

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,953.22 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 the authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

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Dispute Resolution Officer