



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on October 20, 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 with both Tenant and the Landlord in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent and utilities arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and utilities and if so how much?

Background and Evidence

This tenancy started on January 8, 2010 as a month to month tenancy. Rent is \$800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$400.00 on January 8, 2010, the security deposit cheque was returned and the security deposit remains unpaid.

The Landlord said that the Tenant did not pay \$450.00 of rent for January, 2010, \$800.00 of rent for February, 2010, \$500.00 of rent for March, 2010, \$800.00 of rent for April, 2010, \$100.00 of rent for October, 2010, \$800.00 of rent for November, 2010 and the Tenant has \$744.70 of unpaid Utilities when it was due and as a result, on November 2, 2010 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2010. The Landlord said his total monetary claim for unpaid rent and utilities is \$4,194.70. The Landlord also said the Tenant is living in the unit and the Landlord requested an Order of Possession effective November 30, 2010.

The Tenant said he agreed with all the Landlord's testimony and that he was sorry the tenancy had turned out this way. The tenant continued to say that he had told the

Landlord the truth throughout the tenancy, but things had not worked out as he thought they would. The Tenant continued to say that he had a job related injury which kept him from working and as a result he could not pay his rent. The Tenant agreed with the amount the Landlord said he owed; \$4,194.70.

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.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy when it was personally delivered on November 2, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than November 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(b) of the Act that the Landlord is entitled to an Order of Possession to take effect November 30, 2010, after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent and unpaid utilities of \$4,194.70. The Landlord will receive a monetary order for \$4,194.70.

Conclusion

An Order of Possession effective November 30, 2010, after service of it on the Tenant and a Monetary Order in the amount of \$4,194.70 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*.
