



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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. At the beginning of the hearing, the Landlord's agent claimed that the Tenant paid the overdue rent and as a result, the Landlord was withdrawing its application for an Order of Possession and for unpaid rent.

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail to the rental unit address on December 18, 2010 and that the Tenant received it on December 23, 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.

Issue(s) to be Decided

1. Is the Landlord entitled to recover the filing fee for this proceeding?

Background and Evidence

This tenancy started on May 1, 2010. Rent is \$823.00 per month. The written tenancy agreement states when the first month's rent is due but does not state when rent payments are due for each month thereafter. The Landlord said that rent is due on the 1st of each month and that the Tenant paid by automatic bank withdrawal on the 1st of each month (up to December 2010).

The Landlord said the Tenant did not pay December 2010 rent in full and as a result, on December 3, 2010 she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2010 by posting it to the rental unit door. The Landlord did not provide a copy of the Notice as evidence at the hearing however, the Landlord's agent claimed that the arrears shown on the Notice were \$338.00. The Landlord's agent said the Tenant paid this amount on December 31, 2010.



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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 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 December 6, 2010. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than December 11, 2010.

I find that the Tenant did not pay the overdue rent until December 31, 2010 and therefore the Landlord was required to file its application to recover the unpaid rent on December 17, 2010. Consequently, I find pursuant to s. 72 of the Act that the Landlord is entitled to recover from the Tenant the \$50.00 filing fee she paid for this proceeding.

Conclusion

A Monetary Order in the amount of **\$50.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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: January 12, 2011.

Residential Tenancy Branch