



Dispute Resolution Services

Page: 1

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 Landlords for an Order of Possession and a Monetary Order for Unpaid Rent.

The Landlords provided a copy of a tenancy agreement as evidence at the hearing which shows that there is only one Tenant, however on their Application, the Landlords have also named the Tenant's son (A.D.) as a Party. Because the Tenant's son was not a Party to the tenancy agreement, I find that he is not properly named as a Party to these proceedings and the style of cause is amended to remove him.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 19, 2010 to the rental unit address. Section 90 of the Act says that a document delivered by this method is deemed to be received by the recipient 5 days later. The Landlords said they also contacted the Tenant by telephone on December 31, 2010 and advised him of the date and time of the dispute resolution hearing. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and has had reasonable notice of these proceedings. Consequently, the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

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

Background and Evidence

This tenancy started in May 2009, however the Landlords purchased the rental property and took possession of it on October 16, 2009 and executed a tenancy agreement with the Tenant. The tenancy agreement says that rent is \$975.00 per month payable in advance on the 1st day of each month however the Landlords said the Tenant wanted to make cash payments and always paid \$980.00.

The Landlords said the Tenant did not pay rent for November 2010 and did not pay rent for December 2010 when it was due and as a result, on December 7, 2010, the

Landlords served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 7, 2010 by posting it to the rental unit door. The Landlords said the Tenant has not paid the overdue rent and has not paid rent for January 2011.

The Landlords said the Tenant has not resided in the rental unit since approximately November 15, 2010 and his son has not resided in the rental unit since December 17, 2010. The Landlords said the Tenant and his son abandoned furnishings and a number of other personal possessions in the rental unit. Consequently, the Landlords said they advised the Tenant by telephone messages on December 18, 2010 to remove all of his belongings from the rental unit but he has not responded.

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 10, 2010. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than December 15, 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 Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

Although the Landlords said it was the Tenant's practice to make payments of \$980.00, I find that in the absence of a written agreement or enforceable Notice of Rent Increase, they are only entitled to recover the amount of rent set out in the tenancy agreement. Consequently, I find that the Landlords are entitled to recover rent arrears in the amount of \$975.00 for November 2010, \$975.00 for December 2010, \$377.42 pro-rated rent for January 1 – 12, 2010 and \$597.58 for a loss of rental income from January 13 – 31, 2010. I further find that the Landlords are entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding.

Rent arrears:	\$2,327.42
Loss of Rental income:	\$597.58
Filing fee:	<u>\$50.00</u>
Total:	\$2,975.00



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$2,975.00** have been issued to the Landlords. 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*.

Dated: January 12, 2011.

Residential Tenancy Branch