



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: OPR; FF

Introduction

This is the Landlord's application for an Order of Possession and recovery of the cost of the filing fee from the Tenant.

The Landlord's agent TE gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Tenant was personally served with the Notice of Hearing documents at the rental unit at 6:25 p.m. on December 29, 2010. The Landlord's agent testified that the Tenant sent him an e-mail 10 minutes before the scheduled time for the beginning of the Hearing, stating that she could not attend today.

Based on the affirmed testimony of the Landlord's, I am satisfied that the Tenant was duly served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(a) of the Act. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord's witness gave the following affirmed testimony:

The witness served the Tenant with the Notice to End Tenancy issued December 8, 2010, by handing the document to the Tenant at the rental unit at 10:30 a.m. on December 8, 2010.

The Landlord's agent TE gave the following testimony:

Monthly rent is \$446.00, due on the first day of each month. The Tenant did not pay a security deposit. The Notice to End Tenancy was issued for unpaid rent in the amount of \$446.00 that was due on December 1, 2010.

The Landlord's agent testified that the Tenant paid December's rent by cheque on January 10, 2011. The Landlord provided the Tenant with a letter dated January 10, 2011, explaining that the Landlord was accepting this payment for use and occupancy only and was not reinstating the tenancy.

The Landlord's agent testified that the Tenant paid January's rent by on-line banking on January 14, 2011. That payment was processed on January 18, 2011, and the Landlord provided the Tenant with a letter dated January 18, 2011, explaining that the Landlord was accepting this payment for use and occupancy only and was not reinstating the tenancy.

The Landlord's agent asked for an Order of Possession effective January 31, 2011.

Analysis

I accept that the Landlord served the Tenant with the Notice to End Tenancy on December 8, 2010. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on December 18, 2010. The Landlord accepted the Tenant's two payments of \$446.00 on January 10 and January 18, 2010, for use and occupancy only, and advised the Tenant accordingly. The Landlord is entitled to an Order of Possession and I make that Order, effective 1:00 p.m., January 31, 2011.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

Conclusion

I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., January 31, 2011**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord with a Monetary Order in the amount of **\$50.00** against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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 19, 2011.
