



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.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on January 26, 2011. 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.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on April 1, 2010 as a month to month tenancy. Rent is \$493.00 per month payable in advance of the 1st day of each month. No security deposit was required.

The Landlord said that the Tenant did not pay \$493.00 of rent for December, 2010 and \$493.00 of rent for January, 2011 when it was due and as a result, on January 11, 2011 he mailed a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 11, 2011 to the Tenant. The Landlord said the Tenant has unpaid rent for February, 2011 of \$493.00 as well.

The Landlord further indicated that he believes the Tenant is not living at the rental unit and he thinks the Tenant has abandoned the rental unit. The Landlord said he has not seen the Tenant in 3 month and has not talked with her in approximately 5 months.

The Landlord also sought to claim \$56.00 in late payment fees that the Landlord said is written into the Tenancy Agreement.

In addition the Landlord requested to recover the \$50.00 filing fee for this proceeding.

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 5 days after it was mailing by registered mail, or on January 16, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 21, 2011.

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 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 for December, 2010 in the amount of \$493.00 and unpaid rent for January and February of \$493.00 for each month. I further find that the Landlord is entitled to recover the late charge of \$56.00 for late rent payments.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,479.00
Late payment fees	\$ 56.00
Recover filing fee	\$ 50.00
Subtotal:	\$1,585.00

Balance Owing	\$1,585.00
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Conclusion

An Order of Possession effective February 28, 2011 and a Monetary Order in the amount of \$1,585.00 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*.

Residential Tenancy Branch