



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 on January 27, 2011 with the Application and Notice of Hearing (the "hearing package") by registered mail however it was returned to him because it was not addressed properly. Consequently, the Landlord said he re-served the Tenant in person on February 4, 2011 with the Landlord's hearing package. In the circumstances, I find that the Tenant has been sufficiently served for the purposes of s. 59 of the Act and in a manner as required by s. 89 of the Act.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so how much?

Background and Evidence

This fixed term tenancy started on August 1, 2010 and expires on July 21, 2011. Rent is \$925.00 per month payable in advance on the 1st day of each month. The Landlord said the Tenant had rent arrears for November and December 2010 and did not pay rent for January 2011 when it was due. Consequently, the Landlord served the Tenant in person on January 17, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 17, 2011. The Parties agree that those arrears set out on the Notice remain unpaid as well as rent for February 2011.

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 will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant received the 10 Day Notice to End Tenancy on January 17, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than January 24, 2011 (given that the 22nd fell on a weekend or non-business day).

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 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover the following amounts:

Unpaid rent November 2010:	\$925.00
Unpaid rent December 2010:	\$925.00
Unpaid rent January 2011:	\$925.00
Unpaid rent February 1 – 10, 2011:	\$330.36
Loss of rental income Feb. 11-14, 2011:	<u>\$132.14</u>
Subtotal:	\$3,237.50

The Landlord may reapply for a further loss of rental income if required. As the Landlord has been successful in this matter, he is also entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$3,287.50** 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*.

Dated: February 10, 2011.

Residential Tenancy Branch