



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, (MNDC), FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for a loss of rental income and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with her application and Notice of Hearing (the “hearing package”) by registered mail on January 25, 2011 to the rental unit address. The Landlord said the Tenant did not pick up the hearing package. The Landlord also said that she served the Tenant with a copy of her amended Application by registered mail on January 28, 2011 to the rental unit address, but the Tenant refused service of it and it was returned to her. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later (even if they do not pick up the mail). Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord’s hearing package and amended application as required by s. 89 of the Act and the hearing proceeded in the Tenant’s absence.

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 month-to-month tenancy started on September 27, 2010. Rent is \$800.00 per month payable in advance on the 1st day of each month plus utilities. The Landlord said the Tenant did not pay rent for January 2011 when it was due and as a result on January 2, 2011 she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 2, 2011 by posting it to the rental unit door. The Landlord said the Tenant has not paid the rent arrears for January 2011 and has not paid 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. 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 January 5, 2011. Consequently, the Tenant would have had to pay the rent arrears stated on the Notice or apply to dispute that amount ***no later than January 10, 2011.***

I find that the Tenant has not paid the overdue rent. The Landlord said she believed the Tenant submitted an application for dispute resolution on or about January 20, 2011, however she has not been served with a copy of that application. Consequently, I conclude that even if the Tenant has submitted an application for dispute resolution, she did not pursue it and it would now be deemed abandoned. 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 rent arrears for January 2011 in the amount of \$800.00, rent arrears for February 1 – 8, 2011 in the pro-rated amount of \$288.57, a loss of rental income for February 9 – 15, 2011 in the pro-rated amount of \$111.43 and 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 \$1,250.00 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*.

Dated: February 08, 2011.

Residential Tenancy Branch