



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent. The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail to the Tenant's residential address (the rental unit) on February 23, 2011. Section 90 of the Act says that a document delivered in this manner is deemed to be received by the recipient 5 days later. 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.

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 tenancy started on September 18, 2008. Rent is \$700.00 per month payable in advance on the 1st day of each month.

The Landlord said the Tenant did not pay rent for February 2011 when it was due and as a result, on February 3, 2011, the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2011 by posting it to the rental unit door. The Landlord said the Tenant made a payment of \$325.00 on February 1, 2011 which was applied to his (rent and late fee) arrears for January 2011. The Landlord said the Tenant also made payments of \$300.00 on February 14, 2011 and of \$350.00 on February 21, 2011 leaving an unpaid balance of \$50.00 (plus a late fee of \$25.00). The Landlord also said that the Tenant is still residing in the rental unit and has not paid rent for March 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 February 6, 2011. Consequently, the Tenant would have had to pay the amount on the Notice (in full) or apply to dispute that amount no later than February 11, 2011.

I find that the Tenant did not pay the overdue rent for February 2011 in full 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:

Rent arrears for February 2011:	\$50.00
Rent arrears for March 1 – 8, 2011:	\$180.64
Loss of rental income for March 9 – 15, 2011:	\$158.06
Late fees for February and March 2011:	\$50.00
Filing Fee:	<u>\$50.00</u>
Total:	\$488.70

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$488.70** 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: March 08, 2011.

Residential Tenancy Branch