



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's agents said they served the Tenant with the Application, Notice of Hearing and evidence package (the "hearing package") by registered mail on March 3, 2011 and also posted a copy of it on the rental unit door that day. The Tenant did not pick up the registered mail but admitted that she received the copy of the hearing package that was posted on the rental unit door. I find that the Tenant was served with the Landlord's hearing package 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 tenancy started on February 1, 2003. From November 1, 2009 to October 31, 2010 rent was \$382.00 per month and then increased to \$369.00 effective November 1, 2010. Rent is due in advance on the 1st of each month.

The Landlord said that the Tenant accumulated rent arrears of \$1,558.00 as of October 7, 2010 for which she was given a letter setting out the arrears and a 10 day Notice to End Tenancy dated October 7, 2010. The Landlord said the Tenant paid \$350.00 on November 23, 2010 and has made no further payment since that time. Consequently, the Landlord said on February 4, 2011, the Tenant was served in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 4, 2011.

The Tenant said she disagrees with the amount the Landlord claims is owed as rent arrears and claimed that she made a payment of \$400.00 in November 2010 (for December 2010 rent) leaving a balance owing at that time of approximately \$600.00. The Tenant admitted that she has not paid rent for January, February or March 2011. The Tenant said she deposits her rent payments to an account for the Landlord but was

unable to locate her bank statements (as proof of her payments) because her residence was recently treated for bedbugs.

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 ends 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 dated February 4, 2010 in person on February 4, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than February 9, 2011.

The Tenant did not apply for dispute resolution to cancel the Notice. Although the Tenant disagreed with the amount claimed by the Landlord to be in arrears, she admitted that there were some rent arrears. 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.

In the absence of any documentary evidence (such as bank records) from the Tenant to corroborate her claim that the amount of the rent arrears is less than that claimed by the Landlord, I accept the documentary evidence provided by the Landlord and conclude that the Tenant currently has rent arrears of 2,653.00 (which includes March 2011 rent). I also find that the Landlord is entitled to a Monetary Order for that amount as well as 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 **\$2,703.00** 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: March 17, 2011.

Residential Tenancy Branch