



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Landlords said they served the Tenant in person on June 16, 2011 with the Application and Notice of Hearing (the "hearing package"). Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' 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. Do the Landlords 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 May 1, 2011. Rent is \$750.00 per month payable in advance on the 1st day of each month. The Landlords took possession of the rental property on June 1, 2011.

The Landlords said the Tenant did not pay rent for June 2011 when it was due and as a result, on June 7, 2011 the Landlords posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 7, 2011 on the rental unit door. The Landlords said the Tenant made a partial payment of \$500.00 on June 20, 2011 but has not paid the balance of June rent and has not paid rent for July. The Landlords said they accepted the Tenant's partial payment for use and occupancy only and will be issuing the Tenant a receipt to that effect.

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 (if they believe the amount is not owed) 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 June 10, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than June 15, 2011.

I find that the Tenant has not paid the overdue rent in full and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlords are entitled to recover rent arrears for June 2011 in the amount of \$250.00, unpaid rent for July 1 – 11, 2011 in the pro-rated amount of \$266.13 and a loss of rental income for July 12 – 31, 2011 in the pro-rated amount of \$483.87 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 **\$1,050.00** have been issued to the Landlords. 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: July 11, 2011.

Residential Tenancy Branch