



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 compensation for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by courier mail due to the postal strike on June 16, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord’s hearing package as required by the Residential Tenancy Branch and the hearing proceeded in the Tenant’s absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started on July 15, 1995 as a month to month tenancy. Rent is \$964.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$392.50 on June 15, 1995.

The Landlord said that the Tenant did not pay \$964.00 of rent for May, 2011 when it was due and as a result, on May 6, 2011 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated May 6, 2011 on the door of the Tenant’s rental unit. The Landlord continued to say the Tenant has unpaid rent for June, 2011 of \$964.00 and July, 2011 for \$964.00.

The Landlord further indicated that the Tenant is living at the rental unit and the Tenant has told the Landlord that she will be moving out, but the Landlord said the Tenant did not indicate when.

The Landlord also sought to recover a \$25.00 NSF fee charged by the bank for each month of May, June and July, 2011, in accordance with the tenancy agreement and the Landlord requested to recover the \$50.00 filing fee for this proceeding.

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 pay the overdue rent or apply for dispute resolution. If the 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.

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 May 9, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than May 14, 2011.

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 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for May, 2011, in the amount of \$964.00, for June, 2011 in the amount of \$964.00 and July, 2011, in the amount of \$964.00. I further find that the Landlord is entitled to recover the NSF charges of \$25.00 for each month of May, June and July, 2011.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$2,892.00	
NSF charges(3)	\$ 75.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$3,017.00
 Balance Owing		 \$3,017.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$3,017.00 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*.

Residential Tenancy Branch