



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 Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 2, 2011. 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.

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 utilities and if so how much?

Background and Evidence

The Landlord said he is unsure when this tenancy started and there is no written tenancy agreement. The Landlord said he believes the tenancy started 6 or 7 years ago with his parents in-law. Rent is \$1,050.00 per month payable in advance of the 1st day of each month. The Tenant did not pay a security deposit to the Landlord.

The Landlord said that the Tenant has unpaid rent of \$525.00 for July, 2011. As the Tenant did not pay this amount when it was due the Landlord posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 20, 2011 on the door of the Tenant's rental unit on July 20, 2011. The Landlord continued to say the Tenant also has unpaid rent for August in the amount of \$1,050.00. The Landlord said the Tenant is planning to move out of the rental unit today, August 31, 2011, but the Landlord said he is still requesting an Order of Possession with an effective vacancy date that is as soon as possible in case the Tenant does not move out on August 31, 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 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 three days after the Notice was posted on the Tenant's door, or on July 23, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 28, 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 July in the amount of \$525.00 and the unpaid rent for August in the amount of \$1,050.00.

As the Landlord has been successful in this matter, he 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:	\$ 1,575.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$1,625.00
Balance Owing		\$ 1,625.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,625.00 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