



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, a Monetary Order for unpaid rent 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 registered mail on October 4, 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. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on February 1, 2011 as a month to month tenancy. Economic rent is \$1,200.00 per month. The rent is subsidized and the Tenant's portion of the rent is \$516.00 per month payable in advance of the 1st day of each month. No security deposit was required. The Landlord said the Tenant is living in the rental unit and she requested an Order of Possession with an effective date as soon as possible.

The Landlord said that the Tenant did not pay \$484.00 of rent for July, 2011, \$16.00 of rent for August, 2011. The Landlord said the Tenant paid the September rent of \$516.00 on September 14, 2011 and the October rent on September 29, 2011. The Landlord said she issued receipts for the payments indicating "for use and occupancy only". The Landlord said the tenancy was not reinstated and she requested an Order of Possession as soon as possible.

As well the Landlord said the Tenant has two late charges of \$50.00 for each for the months of August, 2011 and for September, 2011. The Landlord said she is applying for a total of \$600.00.

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 five days after it was served by registered mail, or on October 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 October 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 in the amount of \$500.00 and the Landlord is entitled to charge the two late payment fees of \$25.00 each totalling \$50.00. ,

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.

I find the Landlord is entitled to a monetary order for unpaid rent of \$500.00, late rent payment fees of \$50.00 and to recover the filing fee for this proceeding of \$50.00 for a total claim of \$600.00.



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Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$600.00 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*.

Dispute Resolution Officer