



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF
 CNR, CNC, 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 Landlord's agent said on October 19, 2011 he served each of the Tenants with the Application, Notice of Hearing and evidence package (the "hearing package") by registered mail. According to the Canada Post online tracking system, the Tenants received the hearing packages on October 20, 2011. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

The Landlords provided a copy of the tenancy agreement which indicates that only 2 of the 5 persons named on the Landlords' application are Tenants and only those two persons, (C.M. and A.H.) signed the agreement. As the other named tenants were not parties to the tenancy agreement, I find that they are not properly named as parties to this proceeding and the style of cause is amended by removing them.

The Landlord's agent said the Tenants did not serve the Landlords with a copy of their hearing package in this matter. The Landlord's agent said it was only when he filed his application for dispute resolution that he was advised that the Tenants had filed an application. In the absence of any evidence from the Tenants to the contrary, I find that the Landlords were not served with the Tenants' hearing packages as required by s. 89 of the Act and for that reason their application is dismissed without leave to reapply.

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 July 1, 2010. Rent is \$1,350.00 per month payable in advance on the 1st calendar day of each month. The Landlord's agent said the Tenants did not pay rent for October 2011 when it was due and as a result, on October 2, 2011 the Landlord's agent served the M.T. (an adult person who resides in the rental unit), in person with a 10 Day Notice to End Tenancy for Unpaid Rent or

Utilities dated October 2, 2011. The Landlord's agent said rent for October 2011 is still unpaid.

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.

I find that the Tenants were served in person on October 2, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2011. Although the Tenants applied to cancel the Notice their application was dismissed because they did not serve the Landlords with it as required under s. 59 and s. 89 of the Act. Furthermore, I find that there were no grounds for the Tenants' application because I also find that the overdue rent for October 2011 is still unpaid. Consequently, I find the Landlords are entitled pursuant to s. 55(2)(b) of the Act to an Order of Possession to take effect 2 days after service of it on the Tenants.

I also find that the Landlords are entitled to recover rent arrears for October 2011 in the amount of \$1,350.00 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 Tenants and a Monetary Order in the amount of **\$1,400.00** have been issued to the Landlords. A copy of the Orders must be served on the Tenants; 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: October 27, 2011.

Residential Tenancy Branch