



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 as well as to recover the filing fee for this proceeding.

The Landlord said she served the Tenant in person on October 9, 2011 with the Application and Notice of Hearing (the “hearing package”) with her brother present as a witness. The Landlord said the Tenant initially refused to accept the hearing package but then grabbed it and ripped it up. 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.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This tenancy started on May 1, 2011. Rent is \$950.00 per month payable in advance on the 1st day of each month.

The Landlord said the Tenant did not pay rent for September 2011 when it was due and as a result, on September 5, 2011, she served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 3, 2011. The Landlord said the Tenant has not paid the overdue rent for September 2011 and has not paid rent for October 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 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 Tenant was served in person on September 5, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Consequently, the Tenant would have had to pay the amount indicated as rent arrears on the Notice or (if he disputed that there were arrears) apply for Dispute Resolution to dispute that amount no later than September 12, 2011 (given that the 10th fell on a non-business day).

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 2 days after service of it on the Tenant. I also find that the Landlord is entitled pursuant to s. 67 of the Act to recover rent arrears for September and October 2011 in the amount of \$1,900.00 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 Tenant and a Monetary Order in the amount of **\$1,950.00** 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*.

Dated: November 02, 2011.

Residential Tenancy Branch