



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord's agent said he served the Tenant on November 17, 2011 with the Application and Notice of Hearing (the "hearing package") by registered mail. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. 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 April 1, 2010. Rent is \$1,200.00 per month payable in advance on the 1st day of each month.

The Landlord's agent said the Tenant made a partial payment of \$625.00 for November rent but has not paid the balance of \$575.00. As a result, on November 4, 2011 the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2011 by posting it to the rental unit door. The Landlord's agent said the rent arrears have not been paid.

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 with a 10 Day Notice to End Tenancy on November 4, 2011 when it was posted to the rental unit door. 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 November 7, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than November 14, 2011 (given that the 12th fell on a non-business day).

I find that the Tenant has not paid the overdue rent of \$575.00 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 to recover the rent arrears of \$575.00 as well as a late fee of \$25.00 pursuant to a term of the Parties' tenancy agreement to that effect.

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*.

Dated: November 30, 2011.

Residential Tenancy Branch