



Dispute Resolution Services

Page: 1

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 he served the Tenant in person on November 17, 2011 with the Application and Notice of Hearing (the "hearing package"). 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 month-to-month tenancy started on August 24, 2011. Rent is \$800.00 per month payable in advance on the 24th day of each month. There is no written tenancy agreement.

The Landlord said the Tenant did not pay rent for the period, October 24 – November 23, 2011 when it was due and as a result, on November 8, 2011, he served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 8, 2011. The Landlord said the Tenant made a payment of \$800.00 on November 17, 2011 however he advised her that he would not be continuing the tenancy especially since she had allowed an unauthorized occupant to reside in the rental unit. The Landlord said the Tenant has not paid rent for the period, November 24, 2011 – December 23, 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 November 8, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 8, 2011. Consequently, the Tenant would have had to pay the amount shown on the Notice as rent arrears no later than November 13, 2011 or apply to dispute that amount no later than November 14, 2011 (given that the 13th fell on a non-business day).

I find that the Tenant did not apply for dispute resolution and did not pay the overdue rent within the 5 days granted under s. 46(4) of the Act. As a result, 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 rent arrears for the period, November 24, 2011 – December 23, 2011, in the amount of \$800.00 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 **\$850.00** 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: December 08, 2011.

Residential Tenancy Branch