



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.

The Landlord said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 23, 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 August 1, 2011, as a fixed term tenancy with an expiry date of December 31, 2011. Subsidized rent is \$479.00 per month payable in advance of the 1st day of each month. Market rent for the unit is \$622.00 per 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 vacancy date of January 15, 2012.

The Landlord said that the Tenant did not pay \$479.00 of rent for November, 2011 and \$479.00 of rent for December, 2011, when it was due and as a result, on December 2, 2011 the Landlord posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2011 to the door of the Tenant's unit. The Landlord continued to say that the Tenant also has unpaid rent for January, 2012 of \$622.00 as the Landlord did not renew the tenancy which resulted in the rent converting to the market rate of \$622.00. The Landlord said their total claim is for \$958.00 of unpaid rent for November and December, 2011 and if their application is successful market rent for the time period up to January 15, 2012 of $\$622.00/2 = \311.00 and the filing fee of \$50.00 for a total of \$1,319.00.

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 three days after it is posted on the Tenant's door, or on December 5, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than December 10, 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 at 1:00 p.m. on January 15, 2012.

I also find that the Landlord is entitled to recover unpaid rent for November and December, 2011 in the amount of \$958.00 and \$311.00 for the period up to January 15, 2012 totalling \$1,249.00.

As the Landlord has been successful in this matter I order the Landlord to recover the filing fee of \$50.00 from the Tenant. A monetary order has been issued to the Landlord for \$1,319.00 which represents the unpaid rent and the filing fee.

Conclusion

An Order of Possession effective January 15, 2012 and a Monetary Order in the amount of \$1,319.00 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