



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord's agent said she served the Application and Notice of Hearing on the Tenant via registered mail to the rental unit address on January 31, 2012. Section 90 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 November 15, 2011. Rent is \$1,150.00 per month payable in advance on the 1st day of each month. A security deposit of \$575.00 was required but not paid by the Tenant.

The Landlord's agent said shortly after the tenancy started, the Tenant moved in two roommates that she knew only as Tim and Gary. The Landlord's agent said shortly thereafter she no longer saw the Tenant but only his two roommates. The Landlord's agent said the Tenant did not pay rent for December 2011, January 2012. As a result, on January 23, 2012, the Landlord served one of the occupants of the rental unit in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 23, 2012. The Notice to End Tenancy shows "Tim, Gary and all occupants" under the box for the Tenant. The Landlord said the Tenant has also not paid rent for February 2012.

Analysis

Section 46(1) of the Act says that a Landlord may end a tenancy if rent is unpaid by giving a tenant a 10 day Notice to End Tenancy for Unpaid Rent or Utilities. Section 46(4) of the Act says that within 5 days of receiving this Notice, 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.

In this case, the Landlord did not issue the 10 Day Notice *to the Tenant* but rather to the Tenant's roommates. Consequently, I find that the Tenant was not served with the 10 day Notice as required by s. 46 of the Act. As a further consequence, the Landlord will have to re-issue the 10 Day Notice in the name of the Tenant and may pursuant to s. 88 of the Act serve it on an adult person who apparently resides in the rental unit.

In the absence of any evidence from the Tenant to the contrary, I find that there are rent arrears for December 2012, and January and February 2012. Consequently, I find that the Landlord is entitled to recover unpaid rent of \$3,450.00. I also find that the Landlord is entitled to recover from the Tenant the \$50.00 filing fee he paid for this proceeding.

Given that the Tenant did not give the Landlord any notice that he has vacated and in the absence of any evidence that the Tenant has abandoned the rental unit (eg. by removing all of his belongings or by leaving the rental unit vacant), the Landlord may re-apply for an Order of Possession (or for an early end to the tenancy under s. 56 of the Act) by using the rental unit address as the Tenant's address for service.

Conclusion

The Landlord's application for an Order of Possession is dismissed. A Monetary Order in the amount of **\$3,500.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. 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: February 15, 2012.

Residential Tenancy Branch