



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 he served the Tenants on March 14, 2012 with the Application and Notice of Hearing (the "hearing packages") by registered mail. Section 90(a) of the Act says 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 Tenants were served with the Landlord's hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' 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 in April of 2009. Rent is \$1,000.00 per month payable in advance by instalments of \$500.00 on the 1st and 15th day of each month.

In a previous proceeding between these parties heard on March 6, 2012, the Landlord was granted a Monetary Order for unpaid rent to March 15, 2012 in the amount of \$2,500.00 (plus \$50.00 for the filing fee). The Landlord's application for an Order of Possession (ie. to enforce a 10 Day Notice to End Tenancy for Unpaid Rent dated February 5, 2012) was dismissed given that the Landlord was found to have reinstated the tenancy on February 22, 2012 by accepting a partial payment from the Tenants as "rent" instead of for "use and occupancy."

The Landlord said he re-served one of the Tenants in person on March 6, 2012, with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 6, 2012. The Landlord said the Tenants made a partial payment of \$126.29 on March 25, 2012 however he advised them that it would not reinstate the tenancy. The Landlord said the Tenants vacated the rental unit late in the evening on April 1, 2012 without giving him

any notice or a forwarding address. The Landlord also said the Tenants sub-let to other people without his authorization and those people are still occupying the rental unit.

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 Tenants were served in person on March 6, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 6, 2012. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than March 12, 2012 (given that the 11th fell on a non-business day).

In the previous proceeding between these parties held on March 6, 2012, I found that the Tenants had rent arrears up to and including March 15, 2012 of \$2,500.00. I find that the Tenants have not paid this amount and that the Tenants have not paid rent in full for the period, March 16 – 31, 2012. I also find that the Tenants have not applied for dispute resolution to dispute the 10 Day Notice. 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 Tenants. I also find that the Landlord is entitled to recover rent arrears for the period, March 16 – 31, 2012 in the amount of \$373.71, a loss of rental income for the period, April 1 – 15, 2012, in the amount of \$500.00 as well as the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$923.71** have been issued to the Landlord. A copy of the Orders must be served on the Tenants; 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: April 02, 2012.

Residential Tenancy Branch