



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 and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery mail on March 14, 2012. 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. Is the Landlord entitled to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started on November 1, 2011 as a month to month tenancy. Rent is \$950.00 per month payable in advance of the 1st day of each month. The Landlord said the Tenant did not pay a security deposit. The Landlord said the Tenant is living in the rental unit and the Landlord requested an Order of Possession if her application is successful.

The Landlord said that the Tenant did not pay \$200.00 of rent for February, 2012 and \$950.00 of rent for March, 2012, when it was due and as a result, on March 2, 2012 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2012. As well the Landlord said the Tenant has unpaid rent for April, 2012 of \$950.00.

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 on March 2, 2012. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 7, 2012.

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 48 hours after service of it on the Tenant.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant did not have the right under the Act to withhold part or all of the rent for February, March or April, 2012, therefore I find in favour of the Landlord for the unpaid rent of \$200.00 for February, 2012, \$950.00 for March, 2012 and \$950.00 for April, 2012 for a total of unpaid rent in the amount of \$2,100.00.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears: (\$500.00 X 2)	\$2,100.00
Recover filing fee	\$ 50.00
Subtotal:	\$2,150.00
Balance Owing	\$ 2,150.00



Dispute Resolution Services

Page: 3

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Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,150.00 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*.

Residential Tenancy Branch