



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's application named two parties as Tenants, namely, T.B. and S.A. The Landlord's agent said the Tenant, S.A., vacated the rental unit some time ago and as a result, he served only the Tenant, T.B., with a copy of the Landlord's Application for Dispute Resolution and Notice of Hearing (the "hearing package"). As S.A. has not been served with a copy of the Landlord's application, the style of cause in this matter is amended by removing her as a Party.

The Landlord's agent said he served T.B. with the Landlord's hearing package on August 20, 2012 by registered mail. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient five days later (even if they refuse to pick up the mail). Based on the evidence of the Landlord, I find that the Tenant, T.B., 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 as a one year fixed term tenancy on August 1, 2009 and continued on the expiry of the fixed term as a month-to-month tenancy. Rent is \$1,150.00 per month payable in advance on the 1st day of each month.

The Landlord's agent said the Tenant did not pay rent for July 2012 when it was due and as a result, on July 27, 2012, he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the rental unit door. The Landlord's agent said the Tenant did not pay the overdue rent for July or August 2012 and now rent for September 2012 is also unpaid.

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 on July 27, 2012, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Pursuant to s. 90 of the Act, the Tenant is deemed to have received that Notice three days after it was posted or on July 30, 2012. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than August 7, 2012 (given that the 4th, 5th and 6th fell on a non-business days). 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 2 days after service of it on the Tenant.

I also find that the Landlord is entitled to recover rent arrears for July, August and September 2012 in the total amount of \$3,450.00 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 **\$3,500.00** 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: September 20, 2012.

Residential Tenancy Branch