



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 (to enforce a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities) and a Monetary Order for unpaid rent and utilities as well as to recover the filing fee for this proceeding.

The Landlord said he served the Tenant in person on August 26, 2012 with the Application and Notice of Hearing (the "hearing package"). 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 and utility arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started on September 1, 2009. Rent is \$650.00 per month which is due in advance on the 1st day of each month. The Landlord said that during the tenancy, the Tenant also agreed to pay \$15.00 per month for a cable box rental. The Tenant paid a security deposit of \$325.00 at the beginning of the tenancy.

The Landlord said according to a financial ledger of the Tenant's payment history, the Tenant currently has combined rent and utility arrears of \$1,595.00 as of September 10, 2012 when he made a partial payment of \$170.00 on the outstanding arrears. The Landlord said on or about July 21, 2012 he gave the Tenant a One Month Notice to End Tenancy for Cause on the grounds of repeated late payment of rent. The Landlord admitted that he had not served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

The Landlord applied for an Order of Possession pursuant to s. 46 of the Act which is to enforce a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. However, at the

hearing, the Landlord sought to enforce a One Month Notice to End Tenancy for Cause under s. 47 of the Act. Given that the Landlord has not served the Tenant with a 10 Day Notice, his application for an Order of Possession under s. 46 of the Act is dismissed with leave to reapply.

In the absence of any evidence from the Tenant to the contrary, I find that to date the Tenant has combined rent and utility arrears of \$1,595.00 [comprised of \$285.00 for cable and \$1,310.00 for rent] and that the Landlord is entitled to recover that amount. The Landlord may issue the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the basis of these arrears.

I also find pursuant to s. 72(1) of the Act that the Landlord is entitled to recover from the Tenant the \$50.00 filing fee he paid for this proceeding.

Conclusion

The Landlord's application for an Order of Possession is dismissed with leave to reapply. A Monetary Order in the amount of \$1,645.00 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: September 26, 2012.

Residential Tenancy Branch