



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 Landlords for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 21, 2012. According to the Canada Post online tracking system, the Tenant received this mail on September 26, 2012. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords’ 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. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started in May 2012. Rent is \$1,000.00 per month payable in advance on the 1st day of each month.

The Landlords said the Tenant had rent arrears of \$800.00 for August 2012 and did not pay rent for September 2012 when it was due and as a result on September 7, 2012 they served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 7, 2012 by posting it to the rental unit door. The Landlords said the Tenant made the following payments on the rent arrears by depositing the funds to their bank account:

- September 29, 2012: \$1,100.00
- October 5, 2012: \$200.00
- October 12, 2012: \$500.00

The Landlords said they did not issue receipts to the Tenant for these payments but did advise her that they would proceed with their application for an Order of Possession if she did not catch up on the rent arrears including rent for October 2012 by the date of the hearing. The Landlords said the Tenant has not paid rent for October 2012.

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 Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 7, 2012 when it was posted to the rental unit door. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy three days later or on September 10, 2012. Consequently, the Tenant would have had to pay the rent arrears alleged on the Notice ***in full no later than September 15, 2012*** or apply for Dispute Resolution to cancel the Notice no later than September 17, 2012 (given that the 15th fell on a non-business day).

I find that the Tenant did not pay the overdue rent in full within the 5 days granted under s. 46(4) of the Act and has not applied for dispute resolution. In the absence of any evidence from the Tenant to the contrary, I also find that the Landlords did not reinstate the tenancy by accepting payments on the rent arrears after September 15, 2012. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlords are entitled to recover rent arrears for October 2012 in the amount of \$1,000.00 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 **\$1,050.00** have been issued to the Landlords. 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: October 25, 2012.

Residential Tenancy Branch