



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and for compensation for loss or damage under the Act, regulations or tenancy agreement.

The Landlord said his Agent served the Tenant with the Application and Notice of Hearing (the “hearing package”) by personal delivery on April 5, 2013. 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.

At the start of the conference call the Landlord said he mistakenly did not check off the box to request the recovery of the filing fee, but he would like to request it now. I accept the Landlord’s request to include the filing fee of \$50.00 to the Landlord’s application.

Issues(s) to be Decided

1. Does the Landlord have grounds 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 October 15, 2012 as a month to month tenancy. Rent is \$700.00 per month payable in advance of the 15st day of each month. The Tenant did not pay a security deposit.

The Landlord said that the Tenant did not pay \$569.00 of rent for February, 2013 when it was due and as a result, on March 13, 2013 the Landlord’s Agent personally served the Tenant a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 13, 2013. The Landlord said the Tenant has unpaid rent for March, 2013 of \$700.00 and April, 2013 of \$700.00 as well.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession for as soon as possible.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

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 the same day as personally served, or on March 13, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 18, 2013.

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.

I also find that the Landlord is entitled to recover unpaid rent for February, 2013, in the amount of \$569.00 and the unpaid rent for each month of March and April, 2013 of \$700.00. I find the total unpaid rent is \$1,969.00.

As the Landlord has been successful in this matter, he 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:	\$	\$1,969.00	
Recover filing fee	\$	50.00	
Subtotal:			\$2,019.00
Balance Owing			\$2,019.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,019.00 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.TEXT

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 30, 2013

Residential Tenancy Branch

