



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

This application was brought by the landlord on February 8, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on February 2, 2012. The landlord also sought a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance claimed.

Despite having been served with the Notice of Hearing in person on February 15, 2012, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested and authorization to retain the security deposit in set off.

Background and Evidence

According to the landlord, this tenancy began approximately two years ago. Rent is \$450 per month and the landlord holds a security deposit of \$225 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenant had a rent shortfall of \$250 from December of 2011, and had paid only \$300 of the rent due on February 1, 2012.

In the interim, the landlord stated that the tenant had paid an additional \$150 on February 13, 2012, but that the \$250 from December remained outstanding.

Therefore, the landlord requested a Monetary Order for the \$250 outstanding for December rent. The landlord stated that the respondent is otherwise a good tenant and it is possible he would re-instate the tenancy if the outstanding rent was paid, but he requested the orders in the event it was not.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was February 12, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, calculated as follows:

Rent shortfall for December 2011	\$250.00
Sub total	\$300.00
Less retained security deposit (No interest due)	<u>- 225.00</u>
TOTAL	\$ 75.00

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for \$75.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: February 29, 2012.

Residential Tenancy Branch