



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 March 12, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on January 13, 2012. The landlord also sought a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by courier on March 14, 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.

Background and Evidence

According to the landlord, the present tenant assumed this tenancy on January 1, 2012 after his former co-tenant had departed. Rent is \$1,500 per month and the present tenant did not pay a security deposit.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of January 3, 2012 was served when the tenant had failed to pay the rent due on January 1, 2012.

The landlord stated that the tenant had made payments of \$400 and \$375 later in January, but the balance of \$725 remains unpaid.

According to the landlord, despite promises to do so, the tenant has paid no rent for February and or March of 2012. The landlord stated that the tenant has also failed to pay utilities as agreed but the final total is not yet known

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent.

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 January 15, 2012 which was 10 days after service.

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.

The monetary award is calculated as follows:

Rent shortfall for January 2012	\$ 725.00
Rent for March 2012	1,500.00
Filing fee	<u>50.00</u>
TOTAL	\$3,775.00

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, the landlord's copy of this decision is accompanied by a Monetary Order for **\$3,775.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application to claim any further damage or losses as may be ascertained following the conclusion of the tenancy.

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: March 30, 2012.

Residential Tenancy Branch