



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on October 17, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on October 2, 2012. The landlord also sought a Monetary Order for unpaid rent, late fees and recovery of the filing fee for this proceeding.

In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend her application to request authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing in person on October 19, 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 a an Order of Possession and monetary award as requested.

Background and Evidence

This tenancy began on June 24, 2011. Rent is \$720 per month and the landlord holds a security deposit of \$360 paid on June 24, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 2, 2012 had been served after the tenant had not paid the rent due on October 1, 2012. In the interim, the tenant had made partial payment on October 23, 2012, and had paid the November rent on October 24, 2012.

The landlord stated that a balance of \$252.38 remains owing on the tenant's account but she is hopeful he will be able to catch up shortly. However, in the event he is not able to do so, the landlord continued the request for an Order of Possession and a monetary award for the unpaid rent and recovery of the filing fee for this proceeding.

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 October 12, 2012.

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

I further find that the landlord is entitled to a monetary award for the unpaid rent and recovery of the filing fee for this proceeding. As authorized under section 72 of the *Act*, I order that the landlord may recover the amount owed by retaining it from the tenant's security deposit as follows:

Tenant's Credits		
Award to Landlord		
Rent arrears	\$252.38	
Filing fee	<u>50.00</u>	
Total owed to landlord	\$302.38	- <u>302.38</u>
Balance remaining in tenant's credit		\$ 57.62

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 tenants.

In addition, in the event the tenant is not able to catch up on the rent, the landlord is authorized to retain **\$302.38** from the tenant's security deposit in satisfaction of the rent shortfall and recovery of the filing fee for his proceeding.

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: November 23, 2012.

Residential Tenancy Branch