



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 December 19, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on December 8, 2012. The landlord also sought a monetary award for unpaid rent and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and Monetary Order as requested.

Background and Evidence

This tenancy began on December 1, 2012. Rent is \$1,500 per month and the tenant made a payment of \$200 toward the security deposit and subsequently paid \$300 toward the rent in December 2012.

During the hearing, the parties gave evidence that the tenant remains in the rental unit, the balance of the December 2012 rent remains unpaid and in the tenant has paid no rent for January 2013.

The tenancy is somewhat unusual as the rental unit is half of duplex and the respondent tenant also rents the other half.

The tenant stated that had not received a key to the rental unit. The landlord confirmed that was the case because the tenant had not paid rent or the full security deposit.

The tenant stated that he believed he had reached a meeting of the minds on the late rent with a family member of the landlord when he explained that rent would be late due to a change in his job status and pay day. He said he was surprised that the landlord wished to end the tenancy. He said is prepared to pay the overdue rent, but the landlord said that, nonetheless, he still wished to have an Order of Possession.

The tenant stated that he had never received the Notice to End Tenancy but the landlord was insistent that the Notice had been left on the door on December 8, 2012 after the tenant refused to accept it and had slammed the door.

Analysis

As to service of the Notice to End Tenancy, I find the landlord's testimony to be the more credible and accept that it was served on December 8, 2012.

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, the tenant concurred that the only \$500 had been paid toward the December rent, and that he has paid no rent for January 2013.

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 December 21, 2012. (As the notice to end was served by posting, it is deemed under section 90 of the *Act* to have been received three days later with an effective date 10 days later.)

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

I further find that the landlord is entitled to a Monetary Order for the rent shortfall for, December of 2012 and the full rent for January 2013.

As the application has succeeded on its merits, I find that the landlord may recover the filing fee for this proceeding from the tenants.

Thus, I find that, at present, the tenants owe to the landlord an amount calculated as follows:

Rent for December 2012	\$1,500.00
Rent for January 2013	1,500.00
Filing fee	<u>50.00</u>
Sub total	\$3,050.00
Less \$200 plus \$300 paid in installments	<u>- 500.00</u>
TOTAL	\$2,550.00

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.

After credit for partial payments, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$2,550.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The tenant remains at liberty to make application for compensation as may be adduced due to his not being provided with a key.

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: January 21, 2013

Residential Tenancy Branch

