



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	OPR, MNR, MNDC, O and FF
	Tenant:	CNR, MNDC, RP and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of January 28, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated January 28, 2013 and served by posting on the tenants' door. The landlord also sought recovery of partial rent for a period of approximately 18 months to recover a rent reduction granted by her agent without her approval.

By application of January 10, 2013, the tenants had sought to have the Notice to End Tenancy of January 28, 2013 set aside. The tenants also sought an order repair to the rental unit and a monetary order for damage or loss and recovery of the filing fee for this proceeding.

Despite having made application and having been served with the Notice of Hearing on the landlord's application, the tenants did not call in to the number provided to enable their participation in the telephone conference call proceeding. Therefore, the tenants' application is dismissed without leave to reapply and the hearing continued in their absence.

Issue(s) to be Decided

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

Background and Evidence

While neither party submitted a copy of the rental agreement, the landlord's agent appointed in January of 2013 gave evidence that such agreement had been signed on October 10, 2009. Rent was set at \$2,900 due on the 15th day of the month and the landlord holds a security deposit of \$1,450 paid on October 9, 2009.

The agent stated that the rental agreement was in the name of the male tenant and the company named in the landlord's application.

The agent acknowledge that the parties are in dispute over the amount of rent as a previous property manager has come to agreement with the tenants in August of 2011 that rent would be lowered to \$2,600 per month which had been accepted until December of 2012. She stated that when the landlord engaged her to manage the property, she was instructed to demand that the rent be restored to \$2,900 and the accumulated shortfall be recovered.

The landlord stated that the January 2013 rent has not been paid and to the best of her knowledge the tenants remain in the rental unit.

She stated that the rent for February 2013 has not been paid, but I note that the date of the present hearing, February 15, 2013, is the due date.

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 tenants did not pay the rent within five days of receiving the notice and, while they did make application to dispute it, they have failed to appear.

Therefore, under section 46(5) & (6) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was January 30, 2013, taking into account the three days deemed service of documents served by posting.

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; however, in the absence of any compelling evidence to the contrary, I find that – having accepted rent of \$2,600 for over a year, the rent is \$2,600, the amount was set by the landlord's authorized agent and accepted by the landlord.

While the agent has requested loss of rent for the month from February 15, 2013, I reduce the award to one-half as it is possible that the landlord will be able to get new tenants for March 1, 2013. The landlord is at liberty make application if the loss is greater and for any further losses as may be ascertained at the conclusion of the tenancy.

As the landlord's application has partially succeeded, I find that she entitled to recover half of the \$100 filing fee for this proceeding, noting that the filing fee reached \$100 based on the unproven claim of shortfall for over a year.

As authorized under section 72 of the *Act*, I further order that the landlord may retain the tenants' security deposit in set off against the balance owed.

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

Rent for January 2013	\$2,600.00
Rent /loss of rent for one-half of February 2013	1,300.00
One-half of \$100 fFiling fee	<u>50.00</u>
Subtotal	\$3,950.00
Less retained security deposit (No interest due)	<u>- 1,450.00</u>
TOTAL remaining to Monetary Order	\$2,500.00

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 tenants.

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 **\$2,500.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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 15, 2013

Residential Tenancy Branch

