



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD and FF

This hearing was convened on an application by the landlord on February 21, 2013 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 February 6, 2013. The landlord also sought a monetary award for the unpaid rent, late fee, recovery the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on February 23, 2013, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her 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 award as requested.

Background and Evidence

This tenancy began on January 1, 2012. Rent was \$900 per month and the landlord holds a security deposit of \$450 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of February 6, 2013 has been served when the tenant had failed to pay the \$900 rent due on February 1, 2013.

The landlord stated that the tenant vacated the rental unit on March 9, 2013 without giving notice and without provided a forwarding address.

Therefore, the landlord withdrew the request for an Order of Possession but continued the request for the unpaid rent and late fee for February 2013 and rent and loss of rent for March 2013 as a new tenant had not been found for the remainder of March.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due whether or not the landlord is in compliance with the legislation or rental agreement.

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. Tenants 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) & (6) 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 19, 2013 taking into account the three days for deemed service of notice serviced by posting..

Section 7 of the *Act* provides that, if one party to a rental agreement suffers a loss due to the non-compliance of the other with the rental agreement or legislation, the non-compliant party must compensate them for the loss. Section 67 of the *Act* authorizes the director's delegate to determine the amount owed and to issue an order for payment.

I find that the landlord is entitled to a Monetary Order for the unpaid rent and given that the present hearing is on March 19, 2013 and the landlord will have no reasonable chance of finding a new tenant in the current month, I find that the award should include loss of rent to the end of March 2013. The landlord is also entitled to recover the \$50 filing fee for this proceeding from the tenant.

In addition, as authorized under section 72 of the *Act*, I order that the landlord retain the security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated s follows:

Rent February 2013	\$ 900.00
Late fee	25.00
Rent/loss of rent for March 2013	900.00
Filing fee	<u>50.00</u>
Subtotal	\$1,875.00
Less retained security deposit (No interest due)	<u>- 450.00</u>
TOTAL	\$1,425.00

Conclusion

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 **\$1,425.00**, 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: March 19, 2013

Residential Tenancy Branch

