



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR and FF

Introduction

This hearing was convened on an application made by the landlords on April 29, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on April 23, 2013.

The landlords also sought a Monetary Order for the unpaid rent, NSF fees, security deposit and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on March 16, 2013 according to the rental agreement. Rent is \$1,700 per month and while the agreement called for a security deposit of \$850, it had not yet been paid at the time of the hearing.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenants' rent cheques for one-half month's rent for March 2013 and for all of April 2013 had been returned NSF.

The parties concurred that the tenant's had made payments by certified cheque of \$2,000 on April 30, 2013 and \$1,300 on the day of the hearing. The landlord issued receipts with the notation, "for use and occupancy only," indicating that acceptance of the payments did not constitute reinstatement of the tenancy.

In the interim, the tenants remain in the rental unit and some rent remains outstanding.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent, NSF fees 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 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 tenants made partial payment but not within five days of receiving the notice and they did not make application to dispute it.

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 May 3, 2013.

Accordingly, I find that the landlords are entitled to an Order of Possession to take effect at 1 p.m. on May 31, 2013 as requested.

I further find that the landlord is entitled to a Monetary Order for the outstanding rent. As the security deposit could only be retained on application for set off, it would be of no consequence to order it paid as the tenancy is ending. While the landlord requested \$40 in NSF fees for each of the two cheques, regulation 7(1)(c) limits such claims to the actual cost which is \$7 per cheque.

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

Thus, taking into account the late payments, I find that the tenants owe to the landlords an amount calculated as follows:

Amounts due to landlords		
Rent for one-half of March 2013	\$ 850.00	
Rent for April 2013	1,700.00	
Rent for May 2013	1,700.00	
NSF fees (\$7.00 x 2)	14.00	
Filing fee	<u>50.00</u>	
Subtotal	\$4,314.00	\$4,314.00
Less tenants credits		
Payment made on April 30, 2013	\$2,000.00	
Payment made on May 17, 2013	<u>1,300.00</u>	
Sub total	\$3,300.00	- <u>3,300.00</u>
TOTAL balance remaining owed to landlords		\$1,014.00

Conclusion

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on May 31, 2013.

The landlords' copy of this decision is also accompanied by a Monetary Order for **\$1,014.00**, 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: May 17, 2013

Residential Tenancy Branch

