



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC and FF

This hearing was convened on an application made by the landlord on May 28, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on May 10, 2013. The landlord also sought a Monetary Order for unpaid rent, late fees, and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on May 31, 2013, the tenants did not call in to the number provided to enable their participation in the telephone conference call proceeding. Therefore, it proceeded in their 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 Order as requested.

Background and Evidence

This tenancy began on April 1, 2012 under a fixed term rental agreement to May 31, 2013, renewable at its conclusion. Rent is \$820 per month with provision for a \$25 late fee and the landlord holds a security deposit of \$410 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenants had failed to pay the \$820 rent due on May 2, 2013. With consent of the tenants, a \$200 moving allowance was applied to the May 2013 rent, leaving a balance owed of \$620 plus \$25 late fee.

In the interim, the tenants remain in the rental unit and at the time of this hearing on June 19, 2013, the May rent shortfall remained unpaid and the tenants have not paid the rent due on June 1, 2013.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent, late fees and 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 tenants 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 tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was May 23, 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, late fees, and filing fee for this proceeding. In addition, as authorized under section 72 of the *Act*, with consent of the landlord, I order that the landlord retain the security deposit in set off, calculated as follows:

Rent shortfall for May 2013	\$ 620.00
Late fee	25.00
Rent for June 2013	820.00
Late fee	25.00
Filing fee	<u>50.00</u>
Subtotal	\$1,540.00
Less retained security deposit (No interest due)	<u>- 410.00</u>
TOTAL	\$1,130.00

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.

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 **\$1,130.00**, 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: June 19, 2013

Residential Tenancy Branch