



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDC and FF

Introduction

This application was brought by the landlords on March 11, 2011 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 March 2, 2011. The landlords also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

At the commencement of the hearing, the landlords advised that the tenant had vacated the rental unit on or about March 16, 2011 and the Order of Possession was no longer required. The tenant joined the hearing as it was concluding and confirmed that she had moved.

Issues to be Decided

This application requires a decision on whether the landlords are a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding and authorization to retain the security deposit.

Background and Evidence

This tenancy began on December 20, 2010. Rent was \$600 per month and the landlords hold a security deposit of \$300 paid in February 2011. During the hearing, the landlords gave evidence that Notice to End Tenancy had been served when the tenant had failed to pay the rent due on March 1, 2011.

The tenant concurred that the rent had not been paid but questioned whether she should have to pay rent for the full month when she had vacated in mid month as required by the Notice to End Tenancy.

The tenant also stated that the landlords had cut power to the rental unit. The landlords acknowledged that they had found one burned out light bulb in the rental unit after the tenant had left but stated they had not turned off power.

The landlords stated there was some damage to the rental unit and asked to retain the security deposit against the damage; however, as their application addressed only the matter of unpaid rent, the claim for damages cannot be dealt with in the present hearing.

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 tenant did not make application to dispute the notice and I accept the evidence of the landlord that she did not pay the full rent within five days of receiving the notice.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date under the Notice to End Tenancy which was March 15, 2011.

As the tenant breached the rental agreement by not paying the rent, the tenant is responsible for rent for the full month even though she vacated in mid month. As the application has succeeded on its merits, I find that the landlords are entitled to recover the filing fee for this proceeding from the tenant and to retain the security deposit in set off against the balance owed.

Thus, I find that tenant owes the landlords an amount calculated as follows:

Rent for March 2011	\$600.00
Filing fee	<u>50.00</u>
Sub total	\$650.00
Less retained security deposit (No interest due)	- <u>300.00</u>
TOTAL	\$350.00

Conclusion

In addition to authorization to retain the security deposit in set off against the balance owed, the landlords' copy of this decision is accompanied by a Monetary Order for **\$350.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlords remain at liberty to make application for damages ascertained at the conclusion of the tenancy.

April 4, 2011