



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on March 17, 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 4, 2011. The landlord also sought a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding, and authorization to retain the security and pet damage deposits in set off against the balance owed.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, and authorization to retain the security and pet damage deposits.

Background and Evidence

This tenancy began on July 1, 2010. Rent is \$795 per month and the landlord holds a security deposit of \$397.50 and a pet damage deposit of \$397.50 paid shortly before the beginning of the tenancy.

During the hearing, the landlord 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 subsequently paid \$150 toward the rent, but the balance of \$645 remains outstanding beyond the five day period in which full payment would have extinguished the notice.

In the interim, the tenant has paid only \$200 toward the April 2011 rent.

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 17, 2011 taking into account the three days deemed service of a notice served by posting.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenants.

I further find that, including recovery of the filing fee for this proceeding and authorization to retain the security and pet damages deposits which I grant under section 72 of the *Act*, the tenant owes the landlord an amount calculated as follows:

Unpaid rent for March 2011	\$ 645.00
Unpaid rent/loss of rent for April 2011	595.00
Filing fee	<u>50.00</u>
Sub total	\$1,290.00
Less retained security deposit (no interest due)	- 397.50
Less retained pet damage deposit (no interest due)	- 397.50
TOTAL	\$ 495.00

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 upon the tenants.

In addition to authorization to retain the security and pet damage deposits in set off against the balance owed, the landlords' copy of this decision is also accompanied by a Monetary Order for \$495.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for any damages as may be ascertained at the conclusion of the tenancy.

April 6, 2011