



Dispute Resolution Services

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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 October 18, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on October 4, 2011. The landlord 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.

Despite having been served with the Notice of Hearing served in person on October 20, 2011, 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.

The landlord was represented by two property managers.

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 for the unpaid rent and utilities, recovery of the filing fee and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on April 1, 2011. Rent is \$1,200 per month and the landlord holds a security deposit of \$600 paid on March 7, 2011.

During the hearing, the property managers gave evidence that the Notice to End Tenancy of October 4, 2011 had been served after the tenant had a rent shortfall of \$560 for the rent due on October 1, 2011.

In the interim, the October shortfall remains unpaid and the tenant has paid none of the rent due on November 1, 2011.

The property managers gave evidence that the tenant had advised the landlord in October 2011 that her roommate had departed and that she anticipated difficulty paying the rent. The landlord allowed a conditional rent reduction to \$1,000 until the tenant could find a new roommate. However, the landlord learned from other tenants and personal observation that the roommate remained in the rental unit and therefore, declined the rent reduction.

The property managers gave evidence that while \$640 of the October rent had been paid directly by Income Assistance, the direct payment for November had not been paid and the tenant had made no payment.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due irrespective of any grievances the tenants may have for which other remedies are available.

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 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) 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 October 14, 2011.

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, filing fee and authorization to retain the security deposit in set off against the balance owed, calculated as follows:

Rent shortfall for October 2011	\$ 560.00
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Filing fee	<u>50.00</u>
Sub total	\$1,810.00
Less retained security deposit (No interest due)	<u>- 600.00</u>
TOTAL	\$1,210.00

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 is also issued with a Monetary Order for **\$1,210.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord is at liberty to make application for any further losses or damage as may be ascertain at the conclusion of the tenancy.

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: November 10, 2011.

Residential Tenancy Branch