



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 27, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on October 5, 2011. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding but withdrew a request to apply the security deposit against the unpaid rent.

Despite having been served with the Notice of Hearing in person, one on October 27 2011 and the other on October 28, 2011, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. 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 for the unpaid rent and recovery of the filing fee.

Background and Evidence

This tenancy began on May 1, 2009 as a co-tenancy in which one of the current tenants has remained while the other joined the tenancy signing a new co-tenancy rental agreement on February 18, 2011. Rent is \$970 per month and the landlord holds a security deposit of \$475 paid on April 6, 2010.

During the hearing, the landlord's representatives gave evidence that the Notice to End Tenancy of October 5, 2011 had been served when the tenants had a rent shortfall of \$505 for the rent due on October 1, 2011.

They stated that a rent payment of \$1,100 had been paid on November 1, 2011, leaving a rent shortfall of \$375.

The landlord's representatives also submitted a notice to end tenancy submitted by one of the tenants dated October 11, 2011 with an end of tenancy date of October 31, 2011 by which time he had moved but the original tenant remains in the rental unit. .

The landlords seek an Order of Possession and a Monetary Order for the rent arrears and recovery of the filing fee.

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 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) 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 stated as October 18, 2011 on the notice.

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

I further find that the landlord is entitled to a Monetary Order for the unpaid rent of \$375 plus \$50 in recovery of the filing fee for this proceeding for a total of \$425.

As a matter of note, the notice to end given by the tenant on October 11, 2011 could not have taken effect until November 30, 2011 as section 45 of the *Act* requires that such notice be given at least one month in advance and the effective date must be at the end of a rental period following the month in which it is given.

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.

The landlord is also issued with a Monetary Order for **\$425.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord is at liberty to make application for any further losses or damage as may be ascertain at the conclusion of the tenancy and the security deposit remains to be dealt with in accordance with section 38 of the *Act*. .

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 17, 2011.

Residential Tenancy Branch