



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 November 14, 2011 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 October 25, 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 deposit in set off against the balance owed.

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

Background and Evidence

This tenancy began on September 15, 2011. Rent is \$600 per month and the landlord holds a security deposit of \$300 paid on or about September 15, 2011.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy of October 25, 2011 had been served after the tenants had a rent shortfall of \$540 for the rent due on October 1, 2011.

In the interim, the October shortfall remains outstanding and the tenants have not paid the \$600 rent due on November 1, 2011.

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 November 7, 2011, taking into account the three days for 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 tenants.

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.

Thus, I find that the tenants owe the landlord an amount calculated as follows:

Rent shortfall for October 2011	\$ 540.00
Filing fee	<u>50.00</u>
Sub total	\$1,190.00
Less retained security deposit (No interest due)	<u>- 300.00</u>
TOTAL	\$ 890.00

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 tenants.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for **\$890.00**, 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: November 29, 2011.

Residential Tenancy Branch