



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC and FF

Introduction

This application was brought by the landlord on November 15, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy dated November 1, 2011 and served by registered mail. The landlord also sought a Monetary Order for the unpaid rent, loss of rent, late fees and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing served in person on November 16, 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.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent, loss of rent, late fees and filing fee.

Background and Evidence

This tenancy began on September 1, 2011. Rent is \$490 per month and there is no security deposit.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy had been served after the tenant had paid no rent for the entire three months of the tenancy. Therefore, the landlord sought the monetary order for three months rent plus late fees. The landlord also requested that the order include loss of rent for December.

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 November 15, 2011.

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

As the hearing took place on November 30, 2011, I cannot award loss of rent for December as it remains possible that the landlord will be able to find a new tenant for that time and the landlord remains at liberty to make application for future loss of rent when the amount is known for certain. In addition, the landlord made claim for \$50 late fees for each month of unpaid rent which is reduced to \$25 to comply with the limit set by regulation 7(1)(d).

I do find that the landlord is entitled to a Monetary Order for the unpaid rent, late fees and filing fee calculated as follows:

Rent and late fee for September 2011 (\$490 + \$25)	\$515.00
Filing fee	<u>50.00</u>
TOTAL	\$1,595.00

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.

The landlord is also issued with a Monetary Order for **\$1,595.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for any damage or losses as may be ascertained 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 30, 2011.
