



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, and FF

This application was brought by the landlord on November 17, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by posting on the tenant's door on November 8, 2011. The landlord also sought a Monetary Order for the unpaid rent, damage to the rental unit, 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 sent by registered mail on November 17, 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 Monetary Order for the unpaid rent, damage, and filing fee and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on September 1, 2011 under a one-year fixed term agreement. Rent is \$1,200 per month and the landlord holds a security deposit of \$600 paid on September 8, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 8, 2011 had been served after the tenants had failed to pay the \$1,200 rent due on November 1, 2011.

In the interim, the tenants have failed to pay the rent due on December 1, 2011.

In addition, the landlord stated that the entry door to the rental unit had been damaged when police attended to deal with a domestic dispute but it has not yet been repaired and she does not know the cost.

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 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 21, 2011 taking into account the three days deemed service off a notice 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 for November and December 2011. As the landlord does not have a fax machine, taking into account the time for this decision to reach the landlord by mail and the need to repair the door and prepare the unit for viewing, I find that the landlord will not be able to find a new tenant in December. Therefore, I am also awarding loss of rent for the balance of the month.

I further find that the landlord is entitled to recover the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

The monetary award is calculated as follows:

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Rent for November 2011	\$1,200.00
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Filing fee	<u>50.00</u>
Sub total	\$2,450.00
Less retained security deposit (No interest due)	<u>- 600.00</u>
TOTAL	\$1,850.00

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's copy of this decision is accompanied by a Monetary Order for **\$1,850.00**, 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 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: December 05, 2011.

Residential Tenancy Branch