



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MNR, and FF

This application was brought by the landlord on November 21, 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 3, 2011. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* and amended the application to request 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 21, 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 application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and filing fee, and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on November 1, 2011. Rent is \$1,100 per month and the landlord holds a security deposit of \$550 paid on October 15, 2011.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy of November 3, 2011 had been served after the tenant had failed to pay the \$1,100 rent due on November 1, 2011.

She stated that the tenant advised her on November 18, 2011 that she would be vacating the rental unit, that movers would be coming the following day, and that she would meet the landlord's agent to complete the move-out condition inspection report on November 19, 2011.

However, the tenant did not attend that meeting and the agent was unable to contact her despite several attempts.

At the time of the hearing, the tenant's furnishings remain in the rental unit and the tenant has not returned the keys. Therefore, the landlord's agent advised that the Order of Possession was still required.

The tenant has not provided a forwarding address.

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 tenant 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 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 tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for November and rent/loss of rent for December 2011.

In addition, I 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:

Rent for November 2011	\$1,100.00
Filing fee	<u>50.00</u>
Sub total	\$2,250.00
Less retained security deposit (No interest due)	<u>- 550.00</u>
TOTAL	\$1,700.00

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's copy of this decision is accompanied by a Monetary Order for \$1,700.00, 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 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 09, 2011.

Residential Tenancy Branch