



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 18, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on November 7, 2011. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

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.

Background and Evidence

This tenancy began on November 1, 2009. The tenant's share of rent was adjusted downward on November 1, 2011 from \$949 per month to \$882 per month.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 7, 2011 had been served after the tenant had an accumulated rent arrears of \$3,110. Following a partial payment made on November 25, 2011, the landlord advised the tenant by letter of December 6, 2011 that the payment was accepted for use and occupancy only and the Notice to End Tenancy remained in force.

As the time of the hearing, with some payments having been made, but rent for December 2011 now owing, the total rent arrears was \$2,964. The tenant agrees to the amount owed and it was supported by a statement of the tenant's account.

The landlord noted that the Notice of Tenancy of November 7, 2011 was the eighth such notice served in the two years of the tenancy.

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 21, 2011.

Accordingly, I find that the landlord is entitled to an Order of Possession. As requested by the landlord, the order will take effect on January 31, 2012.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for and recovery of the filing fee for this proceeding as follows:

Accumulated rent arrears including December 2011	\$2,964.00
TOTAL	\$3,014.00

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 at 1 p.m. on January 31, 2012.

In addition, the landlord's copy of this decision is accompanied by a Monetary Order for **\$3,014.00**, 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 19, 2011.

Residential Tenancy Branch