



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

This application was brought by the landlord on December 15, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid served in person on December 9, 2011. The landlord also sought a Monetary Order for the unpaid rent and loss of rent, NSF fee and 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 December 16, 2011, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his 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 as requested and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on October 1, 2011. Rent is \$900 per month and the landlord holds a security deposit of \$450 paid on October 1, 2011.

During the hearing, the landlord gave evidence, supported by the bank documents, that the Notice to End Tenancy of December 9, 2011 had been served after the tenant's rent cheque dated December 1, 2011 was returned NSF.

The landlord stated that the December 2011 rent remains unpaid and the tenant remains in the rental unit. Therefore, landlord requested a Monetary Order for \$900 rent and NSF fee of \$25 for December rent, \$900 for rent/loss of rent for January 2012.

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 December 19, 2011.

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 and NSF fee for December 2011. In addition, as the tenant is overholding beyond the end of tenancy date set by the Notice to End Tenancy, it is highly improbable that the landlord will be able to find a new tenant for January 2012. Therefore, am also awarding the landlord \$900 for unpaid rent and loss of rent for the month.

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 and \$25 NSF fee for December 2011	\$ 925.00
Filing fee	<u>50.00</u>
Sub total	\$1,875.00
Less retained security deposit (No interest due)	<u>- 450.00</u>
TOTAL	\$1,425.00

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 \$1,425.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: January 04, 2012.

Residential Tenancy Branch