



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNDS and FF

This application was brought by the landlord on December 16, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid served by posting on the tenants' door on December 6, 2011. The landlord also sought a Monetary Order for the unpaid rent, late fees, 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 19, 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 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 under a fixed term rental agreement set to end on September 30, 2011. Rent is \$709 per month and the landlord holds a security deposit of \$299 paid on September 11, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of December 6, 2011 had been served after the tenants had failed to pay the rent due on November 1, 2011 and December 1, 2011.

In the interim, the November and December rents remain unpaid, the tenants remain in the rental unit and have not paid the rent due on January 1, 2012.

Therefore, the landlord requests a Monetary Order for the unpaid rent/loss of rent and late fees, as per the rental agreement, for each of the three months.

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 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 December 19, 2011 taking into account the three days deemed service of 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 and late fees for each of November and December of 2011. In addition, as the tenants are 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 new tenants for January 2012. Therefore, I am also awarding the landlord unpaid rent/loss of rent and late fees for the January 2012.

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 and \$25 late fee for November (\$709 + \$25 = \$734)	\$ 734.00
Rent/loss of rent and late fee for January 2012	734.00
Filing fee	<u>50.00</u>
Sub total	\$2,252.00
Less retained security deposit (No interest due)	<u>- 299.00</u>
TOTAL	\$1,953.00

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 **\$1,953.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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 05, 2012.

Residential Tenancy Branch