



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNDC, MNSD and FF

This application was brought by the landlord on December 20 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid served by posting on the tenant's door on December 9, 2011. The landlord also sought a Monetary Order for unpaid rent, 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 served in person on December 20, 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 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 March 31, 2012.. Rent is \$750 per month and the landlord holds a security deposit of \$375 paid on September 28, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of December 9, 2011 had been served after the tenant had not satisfied a rent shortfall of \$250 from November 2011 and had paid none of the rent due on December 1, 2011.

The landlord stated that the rent remains unpaid and, though, when the landlord was away on vacation, the tenant told the landlord's brother on December 21, 2011 she was leaving, she left clothing and furniture, including a television set, in the rental unit. The tenant did not provide a forwarding address and continues to receive mail at the rental unit.

Therefore, the landlord asked to amend her application to add loss of rent for January 2012, and I exercised the discretion granted under section 64(3)(c) of the *Act* to permit the amendment.

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 22, 2011 given the three days for deemed service of 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 loss of rent.

In addition, as the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding.

As authorized under section 72 of the *Act*, I further find that the landlord is entitled to authorization to retain the security deposit in set off against the balance owed.

The monetary award is calculated as follows:

Rent shortfall for November 2011	\$ 250.00
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Loss of rent for January 2011	750.00
Filing fee	<u>50.00</u>
Sub total	\$1800.00
Less retained security deposit (No interest due)	<u>- 375.00</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 09, 2012.

Residential Tenancy Branch