



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

Introduction

This application was brought by the landlord on December 28, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid served in person on December 7, 2011. The landlord also sought a Monetary Order for the unpaid rent and loss of rent, 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 30, 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 June 1, 2011. Rent is \$1,250 per month and the landlord holds a security deposit of \$625 paid on June 1, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of December 7, 2011 had been served after the tenant had not paid the rent due on December 1, 2011.

The landlord stated that, in the interim, the December rent remains unpaid, the rent due on January 1, 2012 remains unpaid and the tenant remains in the rental unit despite service of the Notice to End 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 December 17, 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/loss of rent, recovery of 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 December 2011	\$1,250.00
Filing fee	<u>50.00</u>
Sub total	\$2,550.00
Less retained security deposit (No interest due)	<u>- 625.00</u>
TOTAL	\$1,925.00

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 \$1,925.00, 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 13, 2012.

Residential Tenancy Branch