



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 December 22, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on December 2, 2011. The landlord also sought a Monetary Order for the unpaid rent and parking, late fee, and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing in person on December 28, 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 Monetary Order for the unpaid rent, parking and filing fee.

Background and Evidence

This tenancy began on April 1, 2011 under a six-month fixed term agreement changing to a month to month tenancy on October 1, 2011. Rent is \$695 per month plus \$30 per month for parking. The landlord holds a security deposit of \$347.50 paid shortly before the tenancy began but does not request authorization to retain it in the present application.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of December 2, 2011 was served when the tenants had failed to pay the \$695 rent and \$30 parking that was due on December 1, 2011

The landlord stated that the tenants remain in the rental unit. He stated that they had paid part of the balance owed on January 11, 2011 but that he had given them a receipt noting "for use and occupancy only" indicating that the acceptance did not reinstate the tenancy.

The January 11, 2012 payment covered the December balance owed and \$155 of the rent due on January 1, 2012, the balance of which remains unpaid. Therefore, the landlord requested the Order of Possession and a Monetary Order for the balance owed.

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 tenants 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 15, 2011 taking into account the three days deemed service off 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 tenants.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent, parking, late fee and filing fee, calculated as follows:

Outstanding rent for January 2012	\$695.00
Late fee	20.00
Filing fee	<u>50.00</u>
Sub total	\$795.00
Less portion paid on January 11, 2012	<u>- 155.00</u>
TOTAL	\$640.00

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.

The landlord's copy of this decision is also accompanied by a Monetary Order for **\$640.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord is at liberty to make application for any further losses or damage as may be ascertained at the conclusion of the tenancy and the security deposit remains to be dealt with in accordance with section 38 of the *Act*. .

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