



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on February 1, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by registered mail sent on January 15, 2012. The landlord also sought a monetary award for unpaid rent and 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.

Despite having been served with the Notice of Hearing sent by registered mail on February 1, 2012, 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 matter requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent, loss off rent and filing fee, and authorization to retain the security deposit in set off against the balance owed.

Background, and Evidence

This tenancy began on May 1, 2011. Rent is \$750 per month and the landlord holds a security deposit of \$380 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had failed to pay the rent due on January 1, 2011.

The landlord stated that the tenant had indicated his intention to move by text message and that he had not been seen in the rental unit since January 29, 2012.

However, the landlord stated that the tenant had never given written notice, that he has yet to return the keys to the rental unit and some of his belongings, including a flat screen television set, remain in the rental unit.

The landlord stated that the tenant had contacted her on February 3, 2012 proposing to pay the outstanding rent and remove his property on February 10, 2012, an appointment for which he did not appear and he had made no further contact at the time of the hearing.

Therefore, the landlord requests the Order of Possession in order to change the locks and prepare the unit.

The landlord seeks the Monetary Order for rent for January and February 2012 and recovery of the filing fee for this proceeding.

The landlord was directed to Part 5 of the *Regulations* for guidance on dealing with abandoned property.

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 January 30, 2012, taking into account the five days deemed service of documents served by mail.

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, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, calculated as follows:

Rent for January 2012	\$ 750.00
Filing fee	<u>50.00</u>
Sub total	\$1,550.00
Less retained security deposit (No interest due)	<u>- 380.00</u>
TOTAL	\$1,170.00

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 \$1,170.00, 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: February 20, 2012.

Residential Tenancy Branch