



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC and FF

This application was brought by the landlord on February 2, 2012 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on January 26, 2012. The landlord also sought a Monetary Order for unpaid rent and utilities, damage or loss under the legislation or rental agreement and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by register mail on February 8, 2012, 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

Is the landlord is entitled to an Order of Possession and a Monetary Order as requested?

Background and Evidence

This tenancy began on March 1, 2011 under a two-year fixed term rental agreement set to end on February 28, 2013. Rent is \$1,200 per month and there is no security deposit.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenants had failed to pay any rent for the entire 11 months of the tenancy at the time of the notice. In the interim, the tenants have failed to pay the rent for February 2012.

In addition, the landlord has requested the Monetary Order to include loss of rent and unpaid utilities. However, I cannot consider those claims on the present application as the landlord has not submitted invoices for the utilities and the extent of the loss of rent has yet to be determined and will require evidence of the landlord's reasonable efforts to minimize his losses by way of advertisements for new tenants, for example.

The landlord stated that he had not acted sooner to end the tenancy as the tenants had suffered a series of tragic events, and he had accepted their repeated promises that all rent arrears would be paid in full.

The landlord stated that the tenants had vacated the rental unit on February 14, 2012 and he provided their forwarding address. He stated that the tenants had not yet returned the keys and some of their belongings remained in the rental unit. Therefore, he requested the Order of Possession to ensure his right to secure the 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 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 February 5, 2012.

Accordingly, taking into account that the tenants have moved, I find that the landlord is entitled to an Order of Possession effective immediately on service of it to the tenants and the landlord is at liberty to change the locks at his discretion..

In the absence of evidence to the contrary, I further find that the landlord is entitled to a Monetary Order for the unpaid rent for 12 months at \$1,200 per month equaling \$14,400 plus recovery of the \$100 filing fee for this proceeding for a total of \$14,500.

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 immediately on service of it on the tenants.

The landlord's copy of this decision is also accompanied by a Monetary Order for \$14,500, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make application for the unpaid utilities, future loss of rent and any damage to the rental unit as may be ascertained when he regains possession of it.

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 24, 2012.

Residential Tenancy Branch