



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDC and FF

This application was brought by the landlord on February 9, 2012 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by posting on the tenant's door on January 12, 2012. The landlord also sought a Monetary Order for unpaid rent and loss of rent and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on February 11, 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 application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested.

Background and Evidence

This tenancy began on September 15, 2008. Rent is \$1,600 per month and, according to the testimony of the landlord, there is no security deposit remaining.

During the hearing, the landlord gave evidence that the tenant has frequently been in arrears throughout the tenancy, but at the time the Notice to end tenancy was served, he had a rent arrears which, after making a payment of \$1,000, was reduced to \$3,200. The landlord issued a receipt with the notation, "for use and occupancy only," indicating that acceptance of the payment did not constitute reinstatement of the tenancy.

Therefore, the landlord requested a Monetary Order for the \$3,200 outstanding rent and \$50 filing fee and Order of Possession. The landlord also requested that the Monetary Order include an amount for loss of rent for March 2012. However, as it is uncertain as to when the landlord will be able to find a new tenant, that request is deferred to a further hearing.

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 25, 2012, taking into account the three days deemed service of documents 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 recovery of the filing fee for this proceeding, an amount totaling \$3,250.

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.

The landlord's copy of this decision also is accompanied by a Monetary Order for \$3,250, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for a further monetary order for any loss of rent and any damages as may be ascertained at the conclusion of the tenancy.

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 27, 2012.

Residential Tenancy Branch