



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started on August 1, 2010. The rent is \$625.00 per month, which is paid by-monthly in the middle and the end of the month.

The parties did not dispute that the tenant does not pay rent on time. The tenant stated that he has fallen into financial hardships caused by a loss of employment; the landlord said that although he is a good tenant, rent is always late. In the case of March 2012, the landlord served the tenant with a 10 Day Notice to End Tenancy on the 2nd, with an

effective date of March 11th, 2012 for unpaid rent that totalled \$900.00. The tenant said that he paid \$600.00 on or about March 11th, and the balance on or about March 24th. The tenant agreed that this is a problem, and would like to come to a peaceful resolution. The landlord requested an Order of Possession.

Analysis

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. Based on the documentary evidence and the parties' testimony, I accept that the tenant is late paying rent. The rent for March 2012 was paid on or about the 11th and the 24th of the month.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. Pursuant to the notice, rent should have been paid by March 7th, 2012, however it was not paid until the 11th, which is not within the 5 days as required on the notice. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Since the landlord was successful, I authorize the landlord to keep \$50.00 from the tenant's security deposit in satisfaction of the cost for the filing fee.

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: April 03, 2012.

Residential Tenancy Branch