



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD and FF

This application was brought by the landlord on March 15, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on March 4, 2012. The landlord also sought a Monetary Order for unpaid rent, unpaid utilities and recovery of the filing fee for this proceeding. In addition, on the landlord's request, I have exercised the discretion granted under section 64(3)(c) of the *Act* to amend the application to include a request for authorization to retain the security deposit in set off against the balance claimed.

Despite having been served with the Notice of Hearing served by posting on the tenant's door and sent by register mail on March 17, 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 and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on May 1, 2010. Rent is \$700 per month plus one-third of utilities and the landlord holds a security deposit of \$300 paid on or about May 1, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenant had failed to pay the \$700 rent due on March 1, 2012. In

addition, the landlord has submitted invoices showing that the tenant owed \$171.63 as his share of the hydro bill.

The landlord stated that the tenant was seen moving his furniture out of the rental unit but that he did not give notice or provide a forwarding address.

In addition, the tenant changed the combination on the entry door but did not provide the landlord with the new one.

Therefore, the landlord requested an Order of Possession as soon as possible as he has a new tenant for the rental unit. The landlord also requested a Monetary Order for the unpaid rent and utilities, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

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 March 17, 2012, taking into account the three days deemed service of notice served by posting..

Accordingly, and taking into account the probability that the tenant has abandoned the rental unit, I find that the landlord is entitled to an Order of Possession effective at 1 p.m. on April 4, 2012.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and utilities, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

The monetary award is calculated as follows:

Rent for March 2012	\$700.00
Filing fee	<u>50.00</u>
Sub total	\$921.63
Less retained security deposit (No interest due)	<u>300.00</u>
TOTAL	\$621.63

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 at 1 p.m. on April 4, 2012.

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 \$621.63, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application to claim any further damage or losses as may be ascertained following 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: April 03, 2012.

Residential Tenancy Branch