



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on April 5, 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, late fees, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance claimed.

Despite having been served with the Notice of Hearing served by registered mail sent on April 5, 2012, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her 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 September 1, 2006. Rent is currently \$1,001 per month and the landlord holds a security deposit of \$464 paid on August 22, 2006.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenant had failed to rent due on March 1, 2012. In the interim, the March rent remains unpaid and the tenant has not paid rent for April 2012.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent, late fees of \$25 for each month, 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 the present matter, I find no evidence that the tenant paid the rent within five days of receiving the notice or 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, I find that the landlord is entitled to an Order of Possession effective at two days from service of it on the tenant.

As the application has succeeded on its merits, I further find that the landlord is entitled to recover the filing fee for this proceeding for a total Monetary Order calculated as follows:

Rent for March 2012	\$1,001.00
Rent for April 2012	1,001.00
Late fee	25.00
Filing fee	<u>50.00</u>
Sub total	\$2,102.00
Less retained security deposit	- 464.00
Less interest (August 22, 2006)	- <u>14.91</u>
TOTAL	\$1,623.09

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 \$1,623.09, 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 24, 2012.

Residential Tenancy Branch