



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

This application was brought by the landlord on April 11, 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 April 3, 2012. The landlord also sought a Monetary Order for unpaid rent 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 registered mail sent on April 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 and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on January 15, 2012 under a six-month fixed term rental agreement. Rent is \$950 per month and the landlord holds a security deposit of \$475 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenant had failed to pay the \$950 rent due on March 1, 2012 and again on April 1, 2012.

The landlord stated that the tenant had paid the March rent on April 18, 2012 and had promised that he would bring his account up to date on May 7, 2012.

The landlord said that, if the tenant was able to keep to the promise, he was willing to continue the tenancy. However, he requested the Order of Possession and Monetary Order in the event the account was not settled as promised by the tenant.

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 full 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 April 15, 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 to take effect 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 and authorization to retain the security deposit in set off.

The monetary award is calculated as follows:

Rent for April 2012	\$ 950.00
Sub total	\$1,000.00
Less retained security deposit (No interest due)	- 475.00
TOTAL	\$ 525.00

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 \$525.00, 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 26, 2012.

Residential Tenancy Branch