



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 to an adult occupant of the rental unit on April 2, 2012. The landlord also sought a Monetary Order for unpaid rent and utilities, 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 sent by registered mail on April 12, 2012, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their 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 July 18, 2011. Rent is \$1,250 per month and the landlord holds a security deposit of \$650 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenants had failed to pay the \$1,250 rent due on March 1, 2012 and did so again on April 1, 2012.

The landlord stated that the tenants had made partial payments of \$400 and \$280 on March 26, 2012 and April 2, 2012 respectively.

The landlord also submitted copies of gas bills for which the tenants are responsible and have not paid for \$156.62 and \$146.79 for February and March 2012 respectively. In addition, the landlord stated that he has since obtained a statement for April 2012 and that the tenants now owe \$125.63 for the current month.

Therefore, the landlord requested an Order of Possession and Monetary Order for the claims submitted.

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 tenants 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 tenants 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 tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was April 12, 2012.

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 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:

Award to Landlord

Rent for April 2011	1,250.00	
Gas bill for February 2012	156.62	
Gas bill for March 2012	146.79	
Gas bill for April 2012	125.63	
Filing fee	<u>50.00</u>	
Sub total	\$2,979.04	\$2,979.04
Less tenants credits		
Security deposit (no interest due)	\$ 650.00	
Partial payment made on or about March 26, 2012	400.00	
Partial payment made on April 2, 2012	<u>280.00</u>	
Sub total	\$1,330.00	- <u>1,330.00</u>
TOTAL		\$1,649.04

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 tenants.

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 \$1,649.04, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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