



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 19, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on April 6, 2012. The landlord also sought a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding.

In addition, I have exercised the discretion granted by section 64(3)(c) of the Act to permit the landlord to amend the application to request authorization to retain the security deposit in set off against any balance found to be owed.

Despite having been served with the Notice of Hearing sent by registered mail on April 24, 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. .

Background and Evidence

This tenancy began on September 1, 2011. Rent is \$650 per month and the landlord holds a security deposit of \$162.50 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 a rent shortfall of \$325 for the rent due April 1, 2012.

In the interim, that rent remains unpaid and the tenant has failed to pay the rent due on May 1, 2012.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding. Given the lateness in the month when the landlord will receive the Orders by mail, he has asked for rent and loss of rent for May 2012.

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 April 19, 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 loss of rent and recovery of the filing fee for this proceeding as follows:

Rent shortfall for April 2012	\$325.00
Filing fee	<u>50.00</u>
Sub total	\$1,025.00
Less retained security deposit (No interest due)	<u>- 162.50</u>
TOTAL	\$862.50

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 also accompanied by a Monetary Order for **\$862.50**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: May 11, 2012.

Residential Tenancy Branch