



Dispute Resolution Services

Page: 1

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 27, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy served in person on April 17, 2012. The landlord also sought a Monetary Order for unpaid rent. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend the application to request recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

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 or about January 20, 2012. Rent is \$7000 per month and the landlord holds a security deposit of \$350 paid shortly before the beginning of the tenancy.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy of April 17, 2012 had been served when the tenants had failed to pay the \$700 rent due on April 1, 2012. In the interim, tenants remain in the rental unit, and failed to pay the rent due on May 1, 2012, although they made one payment toward the total rent arrears on May 18, 2012.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

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 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 27, 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 tenants.

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 as follows:

Rent shortfall for April 2012 (after \$600 paid on May 18, 2012)	\$100.00
Filing fee	<u>50.00</u>
Sub total	\$850.00
Less retained security deposit (No interest due)	- 350.00
TOTAL	\$500.00

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 tenants.

In addition to authorization to retain the security deposit, the landlord's copy of this decision is also accompanied by a Monetary Order for \$500.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make application to claim any damage as may be ascertained at 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: May 29, 2012.

Residential Tenancy Branch