

DECISION

Dispute Codes OPR, OPB, MNR, MNDC and FF

This application was brought by the landlords on May 28, 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 May 17, 2012. The landlords also sought a Monetary Order for unpaid rent and loss of rent and recovery of the filing fee for this proceeding.

The landlords deferred a claim for damage to the rental unit as the tenancy has not yet ended.

Despite having been served with the Notice of Hearing sent by registered mail on May 29, 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.

As a matter of note, this tenancy was the subject of a hearing on May 16, 2012 in which the landlords were granted a Monetary Order for unpaid rent for April and May of 2012 plus recovery of their filing fee for a total of \$5,050. However, the Dispute Resolution Officer was not able to issue an Order of Possession as she found that a Notice to End Tenancy had not been effectively served.

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 for unpaid rent for June 2012.

Background and Evidence

This tenancy began on November 1, 2011. Rent is \$2,500 per month and the landlords hold a security deposit of \$1,250 paid at the beginning of the tenancy.

During the hearing, the landlords gave evidence that the Notice to End Tenancy of May 17, 2012 had been served as the tenants had not paid any of the \$2,500 rent due on each of April 1, 2012 and May 1, 2012.

In the interim, the April and May rent remains unpaid and the tenants have failed to pay the rent due on June 1, 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 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 May 30, 2012 taking into account the three days deemed service of notice served by posting..

Accordingly, I find that the landlords are entitled to an Order of Possession to take effect two days from service of it on the tenants.

I further find that, in addition to the Monetary Order previously issued for the rent for April and May 2012, the landlords are now entitled to a Monetary Order for the unpaid rent for June 2012.

As the application has succeeded on its merits, I find that the landlords are entitled to recover the filing fee for this proceeding from the tenants.

In addition, as authorized by section 72 of the *Act*, I hereby order that the landlords shall retain the security deposit in set off against the unpaid rent.

Thus, I find that, with respect to the June rent, the landlord is entitled to a further Monetary Order calculated as follows:

Unpaid rent for June 2012	\$2,500.00
Sub total	\$2,550.00
Less retained security deposit	- 1,250.00
TOTAL	\$1,300.00

Conclusion

The landlords' 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 tenants' security deposit in set off against the balance owed, the landlords' copy of this decision is also accompanied by a Monetary Order for **\$1,300.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlords remain at liberty to make application for 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: June 18, 2012.

Residential Tenancy Branch