



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

This application was brought by the landlord on May 31, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on May 2, 2012.

As a matter of note, the same Notice to End Tenancy was the subject of a hearing on May 31, 2012 in which the landlord's application was dismissed with leave to reapply due to a finding of unproven service of the Notice of Hearing on the tenant.

The landlord seeks only an Order of Possession in the present application choosing to defer monetary claims.

In the present hearing, an attending witness gave evidence that she saw the landlord serve the tenant with the Notice of Hearing in person on June 9, 2012. Despite having been so served, 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.

Background and Evidence

According to the landlord's agent, this tenancy began in mid December 2011. Rent is \$800 per month and there is no security deposit.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy of May 2, 2012 had been served when the tenant had failed to pay the rent which was due on both April 1, 2012 and on May 1, 2012.

In the interim, the tenant remains in the rental, has made only one \$300 payment toward the arrears and has paid no rent for June 2012 leaving a total outstanding balance of \$2,100.

The landlord's agent stated that there are extreme concerns about activities in and damage to the rental unit.

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 May 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.

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.

The landlord remains at liberty to make application for the loss of rent and 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 21, 2012.

Residential Tenancy Branch