



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

Introduction

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 by posting on the tenant's door on May 2, 2012. The landlord also sought a Monetary Order for unpaid rent, late fee, NSF fee, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on May 31, 2012, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her 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 December 1, 2008. Rent is \$770 per month and the landlord holds a security deposit of \$360 paid on November 21, 2008.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy of May 2, 2012 was served as a precautionary measure after the tenant had asked that deposit of her cheque could be postponed until May 8, 2012. While the landlord complied with the request, the cheque was subsequently returned NSF.

In the interim, the tenant remains in the rental unit, the May rent remains outstanding and the tenant failed to pay the rent due on June 1, 2012 resulting in service of a second Notice to End Tenancy dated June 5, 2012.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the rent for May and June 2012 plus NSF and late fee for May 2012, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

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 15, 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 calculated as follows:

Rent for May 2012	\$770.00
Rent June 2012	770.00
Filing fee	<u>50.00</u>
Sub total	<u>\$1,635.00</u>
Less retained security deposit	- 360.00
Less interest (November 21, 2008 to date)	<u>0.60</u>
TOTAL	\$1,274.40

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.

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$1,274.40**, 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: June 19, 2012.

Residential Tenancy Branch