



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR and FF

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 17, 2012. The landlord also sought to recover the filing fee for this proceeding, but made no further monetary claims on the present application.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and, if so, the effective date of the order.

Background and Evidence

This tenancy began on May 10, 2012 under a fixed term rental agreement set to end on May 31, 2012. Rent is set at \$995 per month and the landlord holds a security deposit of \$497.50 paid on May 14, 2012. Rent for the portion of May in which the tenancy existed was prorated at \$706.

During the hearing, the parties gave evidence that a social agency assisting the tenants had made a payment toward the May rent on May 15, 2012 of \$481.25 leaving an unpaid balance of \$224.75 due for the month and resulting in the Notice to End Tenancy for unpaid rent served on May 17, 2012.

In the interim, the May shortfall remained outstanding and the tenants did not pay the \$995 rent due on June 1, 2012, though a payment of \$331 was received on June 5, 2012 leaving an outstanding balance of \$888.75 at the time of the hearing.

The attending tenant gave evidence that she believed the social agency assisting the tenants had an agreement with the landlord and that the rent was to be paid in full by June 30, 2012. The landlord did not concur that such an agreement had been made.

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 full 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 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 recover the filing fee for this proceeding from the tenants and, as authorized under section 72 of the *Act*, I hereby order that he may do so by retaining \$50 from the tenants' security deposit.

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, and the landlord is authorized to recover the filing fee for this proceeding by retaining \$50 from the security deposit.

The landlord remains at liberty to make application for a monetary award for the unpaid rent and for any further damage or losses 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: June 07, 2012.

Residential Tenancy Branch