



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 June 12, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on June 2, 2012. The landlord also sought a Monetary Order for unpaid rent, loss of rent, security and pet damage deposits and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on June 14, 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.

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 June 1, 2012 under a one-year fixed term rental agreement signed on May 24, 2012 under which rent was set at \$2,200 per month and the tenants gave the landlord a cheque for \$1,300 of which \$1,100 was to cover the security deposit and \$200 was to cover a pet damage deposit.

During the hearing, the landlord stated that when he attempted to have the \$1,300 cheque of May 24, 2012 for the deposits certified, the cheque was dishonoured by the bank.

Similarly, the rent cheque for June 1, 2012 for \$2,200 was NSF.

The landlord gave evidence that he had served the tenants with a 10-day Notice to End Tenancy on June 2, 2012 by posting on the tenants' door, deemed to have been received three days later under section 90 of the *Act*. The notice, therefore, gave the tenants five days, to June 10, 2012, to pay the rent or make application to contest the notice under section 46(4) of the *Act*.

The landlord stated that the tenants made payment of \$2,245 on June 14, 2012 which he acknowledged with a receipt with the notation, "for use and occupancy only," indicating that acceptance of the overdue rent did not reinstate the tenancy.

The landlord gave further evidence that, at the time of the hearing on July 4, 2012, the rent for July had not yet been paid.

Therefore, the landlord requested an Order of Possession to uphold the Notice to End Tenancy and a Monetary Order for the unpaid rent/loss of rent for July 2012 and for the still unpaid security and pet damage deposits.

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 June 10, 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 tenants.

As to the landlord's request for a Monetary Order for unpaid rent/loss of rent for July 2012, I find that he is entitled to such, taking into account the \$45 overpayment of the \$45 for the June rent.

However, under the present circumstances I cannot add the security and pet damage deposits to the Monetary Order.

Security and pet damage deposits are funds held in trust and can only be passed to the landlord with consent of the tenants or by an order of the director's delegate in set off against damages or indebtedness under circumstances prescribed in sections 38 and 72 of the *Act*. Therefore, if the deposits were to be issued in the present monetary award, the amount would be added to the rent owed rather than set off against it as allowed by the *Act*.

The remedy available to address unpaid security and pet damage deposits is provided under section 47 of the *Act* which permits the landlord to end the tenancy for cause if they are not paid, and in this matter the landlord will already have an Order of Possession.

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

Thus, I find that the tenants owe to the landlord:

Rent for June 2012	\$2,200.00
Filing fee	<u>50.00</u>
Sub total	\$4,450.00
Less payment made on June 14, 2012 for use and occupancy	- 2,245.00
TOTAL	\$2,205.00

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.

In addition, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$2,205.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make application for any further losses or 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: July 04, 2012.

Residential Tenancy Branch