



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on June 19, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by registered mail sent on June 8, 2012. The landlord also sought a Monetary Order for unpaid rent, loss of rent, 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 and posted on the rental unit door on June 19, 2012, 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 and a Monetary Order as requested.

Background and Evidence

This tenancy began on February 15, 2012 under a fixed term rental agreement set to end on February 28, 2013. Rent is \$1,600 per month and the landlord holds a security deposit of \$800.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of June 8, 2012 was served when the tenant had failed to pay the \$1,600 rent that was due June 1, 2012.

In the interim, the tenant has not paid the rent due on July 1, 2012.

The landlord stated she attended the rental unit on or about July 7, 2012 on 24-hour notice to facilitate a fire inspection. She said, some but not all of the tenant's belongings had been removed and a sleeping mattress remained on the floor. The tenant has not given notice, returned the keys to the rental or provided a forwarding address.

Therefore, the landlord requested an Order of Possession to uphold the Notice to End Tenancy and a Monetary Order for the unpaid rent for June and unpaid rent/loss of rent for July 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 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 June 23, 2012, taking into account the five days for deemed service of notice served by registered mail.

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 award for the rent for June 2012 and for rent and loss of rent for July 2012.

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 tenant.

As authorized under section 72 of the *Act*, I further order that the landlord shall retain the tenant's security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent for June 2012	\$1,600.00
Filing fee	<u>50.00</u>
Sub total	\$3,250.00
Less retained security deposit (no interest due)	- 800.00
TOTAL	\$2,450.00

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 of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$2,450.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for any further losses or damage as may be ascertained on regaining possession of the rental unit.

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 10, 2012.

Residential Tenancy Branch