



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 21, 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 June 9, 2012. The landlord also sought a Monetary Order for unpaid rent/ loss of rent, late fees, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

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 September 1, 2012. Rent is \$800 per month and the landlord holds security deposit of \$400 and a pet damage deposit of \$200 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of June 9, 2012 was served when the tenant had failed to pay a \$200 rent shortfall from January 2012 and the rent due on June 1, 2012.

In the interim, the January shortfall and June rent remain unpaid and the tenant has not paid the rent for July 2012.

The tenant stated that she runs a gardening business and that she fell behind in the rent when two major clients failed to settle their accounts with her. She stated that she had offered rent to the landlord in June but the landlord had declined.

The landlord stated that the tenant had only proposed a payment schedule, not the whole rent, and that she had neither offered nor made payment of the whole amount owed by June 17, 2012, the fifth day after the Notice to End Tenancy was deemed to have been received and the last day on which payment of the full rent would have extinguished the notice.

Therefore, the landlord requested an Order of Possession to uphold the Notice to End Tenancy and a Monetary Order for the unpaid rent for January, June and July of 2012 plus late fees of \$25 for each of the three months..

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 22, 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 shortfall for January, full rent for June and rent/loss of rent for July 2012.

However, as I do not have a copy of the rental agreement before me to verify that the parties have agreed on the imposition of late fees, I decline to award the late fees.

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 and pet damage deposits in set off against the balance owed.

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

Rent shortfall for January 2012	\$ 200.00
Rent and/or loss of rent for July 2012	800.00
Filing fee	<u>50.00</u>
Sub total	\$1,850.00
Less retained security deposit and pet damage deposits	- 600.00
TOTAL	\$1,250.00

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 and pet damage deposits in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$1,250.00**, 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 12, 2012.

Residential Tenancy Branch