



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 July 10, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on July 3, 2012. The landlord also sought a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the balance owed from the tenant's security deposit.

At the commencement of the hearing, the landlord gave evidence that the rent had been paid on July 20, 2012 and withdrew the monetary claim for the unpaid rent. However, as the rent was paid outside the five days from service of the notice, payment within which time would have extinguished the notice, the landlord continued the request for the Order of Possession.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession in support of the Notice to End Tenancy and recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy began on September 1, 2005. Rent is \$710 per month and the landlord holds security and pet damage deposits of \$325 each paid on August 24, 2005 and September 1, 2005 respectively.

During the hearing, the landlord gave evidence that the 10-day Notice to End Tenancy was served on July 3, 2012 because the tenant had not paid the \$710 rent due on July 1, 2012.

The landlord stated that the tenant did pay the rent on July 20, 2012 and she submitted into evidence a copy of the applicable receipt which bears the notation, "This is for use and occupancy only and does not reinstate the tenancy."

The tenant gave evidence that he has already found new accommodation, is in the process of moving, and he will be giving vacant possession of the rental unit before July 31, 2012, the end date requested by the landlord for the Order of Possession.

The parties gave evidence that a problem developed earlier in the month with some of the electrical outlets in the rental unit. The landlord stated that an electrician has examined the system and advised that he will have to remove wall surfaces to further explore the problem. With the end of the tenancy imminent, the landlord felt it best to leave the work until the unit was vacant.

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 pay the rent, but did so beyond the five days within which payment would have extinguished the notice under section 46(4) of the *Act* and I find that the landlord did not reinstate the tenancy in accepting the late rent.

The tenant did not make application to contest the notice. 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 July 13, 2012, amended to July 31, 2012 at the request of the landlord.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on July 31, 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 and, as authorized under section 72 of the *Act*, I order that she may do so by retaining \$50 from the tenant's security deposit.

The remainder of the security deposit is to be disposed under section 38 of the *Act*. In the event it is of assistance to the parties, after interest is added and the file deducted, the amount remaining in the deposits is as follows:

Security deposit	\$325.00
Pet damage deposit	325.00
Interest on pet damage deposit from September 1, 2005 to date	<u>11.50</u>
Sub total	\$673.01
Less \$50 award to landlord for the filing fee	<u>- 50.00</u>
TOTAL deposits remain for disposition under S. 38 of the <i>Act</i>.	\$623.01

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 at 1 p.m. on July 31, 2012.

The landlord is authorized to retain \$50 from the security deposit in recovery of the filing fee for this proceeding.

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 26, 2012.

Residential Tenancy Branch