Dispute Resolution Services

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 by posting on the tenant's door on July 2, 2012. The landlord also sought a Monetary Order for unpaid rent. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend his application to request 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 on July 11, 2012, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

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 a Monetary Order for the unpaid rent and filing fee with authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on August 31, 2011 and underwent a change in configuration when the tenant added the lower suite to her tenancy to accommodate her family. At present rent is $2,100 per month and the landlord holds a security deposit of $1,050.

The landlord stated that on a recent visit, he did not recognize the parties occupying the lower suite, but confirmed that his only agreement is with the respondent tenant.

During the hearing, the landlord gave evidence that the 10-day Notice to End Tenancy was served on July 2, 2012 after the tenant had failed to pay the rent due on July 1, 2012.

In the interim, the tenant remains in the rental unit and has not paid the rent for July 2012. Therefore, the landlord requested the Order of Possession in support of the Notice to End Tenancy and the Monetary Order.

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 has not paid the rent and 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 15, 2012, taking into account three days for 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 tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

In addition, as authorized by section 72 of the *Act,* I hereby order that the landlord may retain the tenant's security deposit in set off against the balance owed.

The Monetary Order is calculated as follows:

July rent	$2,100.00
Sub total	$2,150.00
Less retained security deposit (No interest due)	- 1,050.00
TOTAL	**$1,100.00**

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, enforceable through the Provincial Court of British Columbia for $1,100.00 for service on the tenant.

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 27, 2012.

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Residential Tenancy Branch