



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD and FF

Introduction

This application was brought by the landlord on July 12, 2012 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 July 2, 2012. The landlord also sought a Monetary Order for unpaid rent and utilities, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security damage deposit in set off against the balance owed.

At the commencement of the hearing, the landlord advised that the tenant had paid the rent, but did so 15 days after deemed receipt of the Notice to End Tenancy. The landlord withdrew that monetary claim along with premature claims for utilities and damages to the rental unit, but proceeded to request the Order of Possession, recovery of the filing fee for this proceed and an \$25 NSF fee for June 2012.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession the monetary award as requested.

Background and Evidence

This tenancy began on May 1, 2011 under reduced rent of \$1,050 while the tenant considered a possible rent-to-own agreement. When the tenant opted not to purchase the rental unit, the parties entered a new agreement at market rent of \$1,550 per month. When the tenant had difficulty keeping up at that rent, the landlord reduced it to \$1,250 per month. The landlord holds a security deposit \$525 paid on May 1, 2011.

During the hearing, the landlord gave evidence that the June rent had been paid late after the tenant's cheque had been returned NSF.

The landlord stated that the Notice to End Tenancy of July 2, 2012 was served when the tenant had not paid the rent due on July 1, 2012. The parties concur that it was paid on July 20, 2012.

The tenant stated that the landlord had consented to her paying the rent in two instalments, at the beginning and first of the month. The landlord said that was a temporary concession to assist the tenant but that the rental agreement required payment on the first.

The parties concurred that the August rent had not been paid at the time of the hearing on August 2, 2012, but the tenant stated that it was on its way.

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 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 July 15, 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 on August 31, 2012 as requested by the landlord.

I further find that the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenant and the \$25 NSF fee resulting from the failed June 2012 rent cheque.

As authorized under section 72 of the *Act*, I hereby order that the landlord may retain \$75 from the tenant's security deposit in satisfaction of this award.

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 August 31, 2012.

The landlord is authorized to retain \$75 from the tenant's security deposit to recover the filing fee for this proceeding and the \$25 fee from the June 2012 NSF cheque.

The landlord remains at liberty to make application for any 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: August 02, 2012.

Residential Tenancy Branch