



Dispute Resolution Services

Page: 1

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 13, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent on July 6, 2012. The landlord also sought a Monetary Order for unpaid rent, 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.

Despite having been served with the Notice of Hearing, served in person on July 16, 2012, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their 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 award as requested. As the tenancy has not yet ended and the tenants still have the opportunity to remedy damage to the rental unit, this hearing cannot address that part of the claims.

Background and Evidence

This tenancy began on March 15, 2011. Rent is \$600 per month and the landlord holds a security deposit of \$300 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that she served the Notice to End Tenancy of July 6, 2012 when the tenants had failed to pay the rent due on July 1, 2012 and had a rent shortfall of \$100 on the June 2012 rent.

In the interim, the tenants remain in the rental unit and have not paid the rent for August 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 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 tenants 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 tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was July 11, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenants.

I further find that the landlord is entitled to a monetary award for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the tenants' security deposit in set off against the balance owed, calculated as follows:

Rent shortfall for June 2012	\$100.00
Filing fee	<u>50.00</u>
Sub total	\$750.00
Less retained security deposit (No interest due)	- 300.00
TOTAL remaining for Monetary Order	\$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 tenants..

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

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 03, 2012.

Residential Tenancy Branch