



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 13, 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, recovery of the filing fee for this proceeding and 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 18, 2012 and again by registered mail with evidence on July 26, 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.

As a matter of note, the landlord's agent said the tenant had called him the night before the hearing to say she would not be attending the hearing because she would be travelling. In the absence of any properly submitted request in writing from the tenant, I could not consider granting an adjournment.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on or about April 1, 2010. Rent is \$1,600 per month and the landlord holds a security deposit of \$800 paid at the beginning of the tenancy.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy had been served after the tenant had failed to pay off a long standing rent arrears as promised and had begun to accumulate new rent shortfall in May, June and July of 2012.

Specifically, the agent, son of the principal shareholder of the corporate landlord, gave evidence that between October 2010 and March of 2011, the tenant accumulated a rent shortfall of \$5,400 which by May 2011 had grown to \$8,600. After the landlord had applied for dispute resolution in May 2011, the tenant paid \$3,900 of the arrears reducing the debt to \$4,700.

With that payment, the landlord accepted the tenant's promise to pay the rent on time and to pay down rent arrears.

By May of 2011, the tenant had not made further payments on the arrears, and had paid only \$1,200 of the \$1,600 rent for May, June and July 2012.

The landlord stated that the tenant subsequently made one payment of \$1,100 toward the arrears on July 3, 2012 reducing the shortfall from October 2010 to May 2011 to \$3,600 before the rent \$400 shortfalls from May, June and July of 2012.

At the time of the hearing on August 3, 2012, the tenant had not paid the rent for August.

Therefore, the landlord seeks an Order of Possession and a Monetary Order for the unpaid rent, recovery of the filing fee for his proceeding and authorization to retain the security deposit in set off.

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 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 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. 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 tenants and, as authorized under section 72 of the *Act*, I order that the landlord shall retain the security deposit in set off against the balance owed.

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

Remaining rent shortfall from October 2010 to May 2011	\$3,600.00
Rent shortfall for June 2012	400.00
Rent shortfall for July 2012	400.00
Filing fee	<u>100.00</u>
Sub total	\$4,900.00
Less retained security deposit (No interest due)	<u>- 800.00</u>
TOTAL	\$4,100.00

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.

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 for **\$4,100.00**, enforceable through the Provincial Court of British Columbia, 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: August 03, 2012.

Residential Tenancy Branch