



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR and MNR

Introduction

This application was brought by the landlord on July 30, 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.

In this matter, the “landlord” is executor of the deceased landlord’s estate and the tenant was represented by his adult son who has resided in the rental unit for the past few months as an occupant but not a tenant.

I have amended the style of cause accordingly to indicate that the applicant is an executor and I have deleted the name of the occupant.

The tenant’s son indicated that his father suffers from health challenges and was not able to attend the hearing. However, in view of the clarity of the issue of unpaid rent in the legislation, I denied the tenant’s request for an adjournment.

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

The parties estimate that this tenancy began 10 or 15 years ago and they agree that rent is \$590 per month..

During the hearing, the executor submitted into evidence a copy of a letter to the tenant dated January 20, 2012, advising that he had been directed to liquidate the assets of the decedent landlord. The letter initially asked for vacant possession at the end of May 2012, subsequently amended to June 30, 2012. To assist the tenant with relocation, the letter offered the tenant free rent for the last month of the tenancy if the tenant vacated as requested.

The executor stated that the tenant had not honoured the request to vacate, remains in the rental unit and had not paid rent for May, June, July. Therefore, he issued the 10-day Notice to End Tenancy for unpaid rent on July 3, 2012. In the interim, the tenant did not pay the rent for August 2012.

The tenant's son said that he and a female occupant had been paying their rent to his father and they had not been aware that the tenant had not been forwarding the funds to the landlord's estate.

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.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect on 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 for the four months from May to August 2012 inclusive, calculated as $4 \times \$590 = \$2,360$.

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.

The landlord's copy of this decision is also accompanied by a Monetary Order, 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 28, 2012.

Residential Tenancy Branch