



Dispute Resolution Services

Page: 1

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 August 10, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on July 16, 2012. The landlord also sought a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to amend the application to request authorization to retain the security deposit in set off against any balance found to be owed.

Despite having been served with the Notice of Hearing served in person, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his 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.

Background and Evidence

This tenancy began on June 30, 2012. Rent is \$1,100 per month and the landlord holds a security deposit of \$400.00 paid on or about July 6, 2012.

During the hearing, the landlord gave evidence that he served the 10-day Notice to End Tenancy of July 16, 2012 when the tenant had not paid the rent due on July 1, 2012.

He also submitted a copy of a Notice to End Tenancy for cause on August 5, 2012 citing too many people in the rental, partying, refusal to admit the landlord to repair a water line, and disturbance of neighbours, among others.

However, the present hearing will deal with the Notice to End Tenancy for unpaid rent.

During the hearing, the landlord gave evidence that despite having been served with the notices to end tenancy, the tenants remain in the rental unit. To date, they have not paid the rent for July 2012 and in the interim, they have failed to pay rent for August or September of 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 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 26, 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 tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for July, August and September of 2012. As authorized under section 72 of the *Act*, I authorize the landlord to retain the security deposit in set off against the unpaid rent.

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

Rent for July 2012	\$1,100.00
Rent for September 2012	1,100.00
Filing fee	<u>50.00</u>
Sub total	\$3,350.00
Less retained security deposit (No interest due)	<u>- 400.00</u>
TOTAL	\$2,950.00

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 for **\$2,950.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make a further application for any damages 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: September 12, 2012.

Residential Tenancy Branch