



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 August 22, 2012 seeking an Order of Possession pursuant to two 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on August 2, 2012 and September 4, 2012. The landlord also sought a Monetary Order for the 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 August 24, 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.

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 March 1, 1998. Rent is currently \$1,565 per month and the landlord holds a security deposit of \$350 paid on January 17, 1998.

During the hearing, the landlord gave evidence that he served the 10-day Notice to End Tenancy of August 2, 2012 when the tenant had failed to pay the rent due on August 1, 2012.

When the August rent remained unpaid and the rent due on September 1, 2012 had not been paid, the tenant was served a second 10-day notice on September 4, 2012.

The landlord stated that the rent for both months remains unpaid and he believes the tenant remains in possession of the rental unit, although he had been advised she appeared to be moving some items out on the weekend before the hearing.

The landlord now requests an Order of Possession to take effect two days from service of it on the tenant and a Monetary Order for the rent for August and September of 2012 rent 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 first Notice to End Tenancy which was August 15, 2012.

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

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for August and September of 2012 and, as the application has succeeded on its merits, I find that the landlord may recover the filing fee for this proceeding from the tenant.

As authorized under section 72 of the *Act*, I hereby order that the landlord may retain the security deposit plus interest in set off against the unpaid rent.

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

Rent for August 2012	\$1,565.00
Filing fee	<u>50.00</u>
Sub total	\$3,180.00
Less retained security deposit	- 350.00
Less interest on deposit from Jan 17, 1998 to date	- <u>44.88</u>
TOTAL	\$2,785.12

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 **\$2,785.12**, 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 25, 2012.

Residential Tenancy Branch