



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This application was brought by the tenants on September 21, 2012 seeking to have set aside a 10-day Notice to End Tenancy for unpaid rent dated September 11, 2012 and received on September 17, 2012 according to the tenants' application.

Issue(s) to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

This tenancy began on March 15, 2011. Rent is \$1,150 per month and the landlord holds a security deposit of \$575 paid at the beginning of the tenancy.

During the hearing, the building manager gave evidence that the Notice to End Tenancy had been served when the tenants had a rent shortfall for June, July and August of 2012 and had paid no rent for September 2012. In the interim, the tenants remain in the rental unit, the accumulated rent shortfall remains unpaid and the tenants have paid no rent for October 2012.

The attending tenant and her advocate acknowledged that there is rent owing, but gave explanation that, due the tenant having been the victim of identity theft, the Ministry which normally pays the rent by direct deposit (topped up by a money order), has been withholding the funds.

They stated that the Ministry has said they will settle the account shortly pending clarification of CPP information.

The building manager gave evidence that the applicants are otherwise excellent tenants who she would prefer to keep, but that with unpaid rent stretching back five months, she can no longer grant further grace on the arrears.

As a matter of note, the parties said that they had a hearing on October 22, 2012 on the landlord's application, but the landlord had withdrawn in order to give the tenants a little more time to bring matters to conclusion with the Ministry.

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 while the tenants have made application to contest the notice, they did not pay the full rent within five days of receiving 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, if received on September 17, 2012, would have been September 27, 2012.

Accordingly, I find that the Notice to End Tenancy is lawful and valid and I cannot set it aside.

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's verbal request when a tenant's application to set aside is dismissed and the notice upheld.

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

While I cannot grant the landlord a Monetary Order on dismissal of the tenants' application, in the event of assistance to the parties, the landlord claimed as follows:

Rent shortfall for June 2012	\$404.65
Rent shortfall for August	350.14
Rent for September 2012	1,150.00
Rent for October 2012	1,150.00
Late fee of \$25 for each of the five months	<u>125.00</u>
TOTAL	\$3,529.93

As the landlord did some of the calculations quickly during the hearing, this total may vary but is provided as a general indication of the amount of the outstanding rent.

Conclusion

The Notice to End Tenancy dated September 11, 2012 is upheld and the tenants' application is dismissed.

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.

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: October 25, 2012.

Residential Tenancy Branch