



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 September 20, 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 September 9, 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 permit the application to be amended to request 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 September 23, 2012, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on July 10, 2012 under a one-year fixed term agreement to June 30, 2013. Rent is \$1,650 per month, due on the first, and the landlord holds a security deposit of \$825, paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenants had failed to pay the \$1,650 rent that was due on September 1, 2012.

In the interim, the tenants remain in the rental unit, September rent remains unpaid and the tenants have paid no rent for October 2012 as of October 24, 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 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 tenants did not pay the full 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 tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was September 22, 2012, taking into account the three days for deemed service of documents 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 tenants.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding and, as empowered by 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 tenants owe to the landlord an amount calculated as follows:

Rent for September 2012	\$1,650.00
Filing fee	<u>50.00</u>
Sub total	\$3,350.00
Less retained security deposit (No interest due)	- <u>825.00</u>
TOTAL	\$2,525.00

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 tenants.

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 **\$2,525.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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: October 24, 2012.

Residential Tenancy Branch