



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 7, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on August 29, 2012 by posting on the tenant's door. The landlord also sought a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security damage deposit in set off against the balance owed.

Issue(s) to be Decided

This application 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 1, 2002. Rent is \$845 per month and the landlord holds a security deposit of \$315 paid on June 15, 2002.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of August 29, 2012 was served when the rent due on August 1, 2012 had not been paid. In the interim, he stated that August rent remains unpaid and the tenant has not paid rent for September or October 2012.

The tenant concurred that he has not paid the rent for the past three months and made explanation that his business employment had suffered a down turn.

The landlord stated that he was an excellent tenant in all other respects but that the building owners could no longer sustain the loss of income.

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 September 11, 2012 taking into account the three days deemed service of notices 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 tenant. The tenant stated that he would make every effort to vacate the rental unit by October 20, 2012 and the landlord concurred that would give him enough time to prepare the rental unit for a new tenancy.

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 plus interest in set off against the unpaid rent.

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

August 2012 rent	\$845.00
October 1, 2012 rent/loss of rent	845.00
Filing fee	<u>50.00</u>
Sub total	\$2,585.00
Less retained security deposit	- 315.00
Less interest (June 15, 2002 to date)	<u>- 11.15</u>
TOTAL	\$2,258.85

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 **\$2,258.85**, 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: October 10, 2012.

Residential Tenancy Branch

