



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: OPR, MNR, MNDC, MNDS and FF
Tenant: CNR

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of October 16, 2012, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on October 5, 2012. The notice set and end of tenancy date of October 15, 2012 which is automatically corrected by section 53 of the Act to October 18, 2012 to account for the three days for deemed service of documents served by posting.

The landlord also sought a Monetary Order for unpaid rent, damage or loss under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

By previous application of October 11, 2012, the tenant sought to have the notice set aside.

Despite having made application and having been served with the landlord's Notice of Hearing, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, the tenant's application was dismissed without leave to reapply and the hearing proceeded on the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary award as requested or is there evidence to warrant setting the notice aside?

Background and Evidence

This tenancy began on April 1, 2009. Rent is currently \$559 per month and the landlord holds a security deposit of \$280 paid on March 203, 2009.

During the hearing, the landlord's agents gave evidence that the 10-day Notice to End Tenancy of October 5, 2012 had been served after the tenant had failed to pay the rent due on October 1, 2012.

They stated that, at the time of the hearing, that the tenant remained in the rental unit and the October rent remains unpaid. They said the tenant had advised that she intends to move, but she had not yet given notice.

Therefore, the agents requested an Order of Possession and the monetary award for the unpaid rent and filing fee and authorization to retain the security deposit in set off against the balance owed.

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, while the tenant did make application to contest the notice, I find as fact that the tenant did not pay the rent within five days of receiving the notice.

Therefore, I find that the Notice to End Tenancy of October 5, 2012 is lawful and valid, and that 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, 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 and pet damage deposits in set off against the unpaid rent.

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

Rent for October 2012	\$559.00
Sub total	\$609.00
Less retained security deposit (No interest due)	- 280.00
TOTAL	\$329.00

Conclusion

The tenant's application is dismissed without leave to reapply.

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 \$329.00, 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 further loss or damage 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 26, 2012.

Residential Tenancy Branch