



Dispute Resolution Services

Page: 1

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 14, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on September 2, 2012. The landlord also sought a Monetary Order for unpaid rent and late fees, 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.

Despite having been served with the Notice of Hearing served in person on September 18, 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 now requires a decision on whether the landlord is entitled to an Order of Possession and a monetary award for unpaid rent, late fees, filing fee and authorization to retain the security and pet damage deposits in set off.

Background and Evidence

This tenancy began on November 1, 2010. Rent is \$975 per month and the landlord holds security and pet damage deposits of \$487.50 each, both paid on October 21, 2010. The rental agreement includes a provision that the tenant pays an additional \$25 fee if rent is late.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of September 2, 2012 had been served after the tenant had failed to pay the \$975 rent due on September 1, 2012.

The landlord stated that the tenant later paid the September 2012 rent in three installments, each made after September 10, 2012, the end of the five-day period in which payment would have extinguished the notice (taking into account the three days for deemed service of notice served by posting).

For each payment, the landlord stated that she had issued a receipt with the notation, "for use and occupancy only," indicating that acceptance did not constitute reinstatement of the tenancy. The landlord stated that the tenant had paid \$1,050 for the rent, late fee and filing fee, and the landlord credited \$75 late fee and filing fee toward the October 2012 rent.

However, when the balance of the October rent was not paid, the landlord advised the tenant she would be proceeding with the hearing.

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 15, 2012.

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.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for October 2012, late fee, and 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 and pet damage deposits in set off against the unpaid rent.

Thus, I find that accounts balance as follows:

Rent shortfall for October 2012	\$900.00
Filing fee	<u>50.00</u>
Sub total	\$975.00
Less retained security and pet damage deposits (No interest due)	<u>- 975.00</u>
TOTAL	\$ 00.00

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 at 1 p.m. on October 31, 2012.

The landlord is authorized to retain the security deposit and pet damage deposits in set off, and in full satisfaction of the amount owed.

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 19, 2012.

Residential Tenancy Branch