



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on September 6, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent sent on August 24, 2012 by registered mail. The landlord also sought a Monetary Order for unpaid rent, loss or damage under the rental agreement or legislation 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 landlord to amend his application to request to authorization to retain the security deposit in set off against the balance owed.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on April 1, 2012. Rent is \$1,100 per month and the landlord holds a security deposit of \$550 paid on March 2, 2012.

At the commencement of the hearing, the attending tenant gave evidence that she had not received the Notice of Hearing until September 24, 2012 while it was issued on September 6, 2012 and should have been served within three days.

There is no remedy in the *Act* for service outside the three days and I find that the tenants received the notice 12 days before the hearing, had adequate time to respond, and were not prejudiced by the delay. Therefore, I find that the hearing should not be affected by it.

The tenant also denied having received the Notice to End Tenancy of August 24, 2012, but Canada Post tracking information shows that August 24, 2012 was successfully delivered to the tenants on August 27, 2012. I find, on balance of probabilities, that the registered mail contained the Notice of Hearing and I find that service of it was perfected.

The landlord gave evidence that he had served the Notice to End Tenancy of August 24, 2012 when the tenants had a rent shortfall from July 2012 of \$500 and had not paid any of the rent due on August 1, 2012. He said that, in the interim, the tenants remain in the rental unit, the rent arrears remains unpaid, and they have paid no rent for September or October, 2012.

The tenant concurred that no rent had been paid for August, September or October 2012, but she stated that she had paid the full rent for July 2012 and has a receipt, but didn't realize she should submit it into evidence.

The tenant stated that the tenants had a verbal agreement with the landlord that he would credit work they had done on the rental unit against rent. The landlord stated that he had never made such an agreement with the tenants.

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 tenants 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 tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was September 8, 2012, taking into account the five days for deemed service of notice served by mail and adding the 10 days for effect of such notice.

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.

As to the request for a monetary order, in the absence of a written agreement for services in lieu of rent, I accept the evidence of the landlord that there was no such agreement.

Given the undocumented disagreement as to the amount of July 2012 rent, I dismiss this claim with leave to reapply.

However, I find that the landlord is entitled to a Monetary Order for the unpaid rent for August and September 2012 and for unpaid rent and/or loss of rent for October 2012.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants 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 tenants owe to the landlord an amount calculated as follows:

Rent for August 2012	\$1,100.00
Rent and loss of rent for October 2012	1,100.00
Filing fee	<u>50.00</u>
Sub total	\$3,350.00
Less retained security deposit (No interest due)	<u>- 550.00</u>
TOTAL	\$2,800.00

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 **\$2,800.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord is granted leave to reapply for the claimed \$500 rent shortfall for July 2012 and the landlord remains at liberty to make 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 05, 2012.

Residential Tenancy Branch