



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 August 29, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent sent on August 9, 2012 by registered mail. The landlord also sought a Monetary Order for unpaid rent, loss or damage under the rental agreement or legislation, 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 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 January 1, 2012. Rent is \$431 per month and the landlord holds a security deposit of \$200 paid at the beginning of the tenancy.

During the hearing, the tenant agreed with the landlord's claim that he has an accumulated rent shortfall since May 2012 which has now grown to \$2,017.

The landlord stated that he is attempting to arrange a payment schedule with the tenant but, in the event that does not progress, he requested an Order of Possession to take effect on October 31, 2012.

While the tenant expressed the belief that he might be able to pay a greater amount, the landlord stated that if he tenant was able to pay \$700 toward the arrears by the end of October 2012, he would not enforce the Order of Possession at that time.

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 August 21, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on October 31, 2012 as requested and to be enforced at the discretion of the landlord.

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:

Accumulated rent shortfall as of October 1, 2012	\$2,017.00
Sub total	\$2,067.00
Less retained security deposit (No interest due)	<u>- 200.00</u>
TOTAL	\$1,867.00

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.

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 **\$1,867.00**, 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 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 1, 2012.

Residential Tenancy Branch