



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC and FF

Introduction

This application was brought by the landlords on October 4, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on an adult occupant of the rental unit on September 6, 2012.

The landlord also sought a Monetary Order for unpaid rent 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 additional unpaid rent and loss of rent accumulated in the interim.

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, 2010. Rent is \$1,055 per month and the landlord holds a security deposit of \$50 paid at the beginning of the tenancy.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy of October 6, 2012 had been served when the tenant had not paid the rent due on September 1, 2012. In the interim, the tenant remains in the rental unit and has not paid the rent due on October 1, 2012 and November 1, 2012.

The tenant concurred that she has not paid the rent as claimed by the landlord.

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 20, 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 September and October 2012. In addition, taking into account time to gain vacant possession and preparation of the rental unit, I find that the landlord has no reasonable opportunity to find a new tenant for November 2012. Therefore, I find the monetary award should include unpaid rent and loss of rent for November 2012. I also award the landlord recovery of the filing fee for this proceeding.

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

September 2012 rent	\$1,055.00
November 2012 rent/loss of rent	1,055.00
Filing fee	<u>50.00</u>
TOTAL	\$3,215.00

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 tenant.

The landlord's copy of his decision is also accompanied by a Monetary Order for **\$3,215.00**, 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: November 06, 2012.

Residential Tenancy Branch