



Dispute Resolution Services

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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 October 5, 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 4, 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 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 an Order of Possession and monetary award as requested.

Background and Evidence

This tenancy began on May 1, 2007. Rent is \$605.05 per month and the landlord holds a security deposit of \$250 paid on April 20, 2007 and a pet damage deposit of \$280 paid on July 28, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of September 4, 2012 had been served when the tenant had not paid the rent due on September 1, 2012 and the tenant had advised him on September 3, 2012 that his disability income would not allow him over \$350 for rent.

The tenant's letter acknowledged that the landlord had the security and pet damage deposits and asked for the date on which the landlord wished him to vacate.

The landlord replied on September 18, 2012 asking the tenant to vacate by September 30, 2012. When he had not done so, the landlord submitted the present application. The tenant stated that his intention to move had been frustrated by a fire in his prospective new residence.

The landlord stated that, at the time of the hearing, the tenant was now in arrears by three months' rent. The parties were uncertain whether a payment made in September had applied to rent for August or September 2012. However, I note that the Notice to End Tenancy stated that the tenant owed \$605.05 as of September 1, 2012.

As a matter of note, the tenant stated that the landlord had turned the power off and the landlord acknowledged that he had done so. I advised the landlord that he cannot lawfully turn off the power as a response to unpaid rent and that he restore it immediately which he agreed to do.

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 17, 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. However, in the absence of any documentary evidence such as a copy of a statement of the tenants account, and in view of the parties apparent agreement that a rent payment was made in September (and the Notice to End Tenancy showing only one rent payment outstanding), I must find that the landlord has not met the burden of proof with respect to the September rent. If it was paid, it was after the five days grace period granted by section 46 of the *Act*.

As the claim for rent for October and November, the tenant concurred those were outstanding and I find they are owed. I also award the landlord 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 the tenant owes to the landlord an amount calculated as follows:

October 2012 rent	\$ 605.05
Filing fee	<u>50.00</u>
Sub total	\$1,260.10
Less retained security deposit	- 250.00
Less interest due (April 20, 2012 to date)	- 6.42
Less retained pet damage deposit	280.00
Less interest (July 28, 2008 to date)	<u>- 1.80</u>
TOTAL	\$ 721.78

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.

In addition to authorization to retain the security and pet damage deposits in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$721.78**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The tenant remains at liberty to make application for matters he raised during the hearing that could not be addressed under the landlord's application.

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 08, 2012.

Residential Tenancy Branch