



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 October 16, 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 October 2, 2012. The landlord also sought a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on October 17, 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 a an Order of Possession and monetary award as requested.

Background and Evidence

This tenancy began on January 18, 2012. Rent was \$600 per month at the beginning of the tenancy but was reduced to \$300 per month starting August 1, 2012 after bylaw enforcement officials ordered the stove removed from the rental unit. The landlord holds a security deposit of \$300 and a pet damage deposit of \$150 paid at the beginning of the tenancy.

.

During the hearing, the landlord gave evidence that, after the removal of the stove, the tenant agreed to continue the tenancy at the reduced rent to continue to store her furnishings and to sleep in the unit on occasions when she was not staying with her boyfriend.

The landlord stated that she had paid the \$300 rent for August 2012, but that she had not paid for September, October or November of 2012.

The landlord also stated that the tenant had not paid the \$600 rent for March 2012.

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 October 12, 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, October and November of 2012. However, in the absence of a copy of a tenant ledger or copies of a numbered receipt book, and taking into account the passage of time, I find that I do not have sufficient evidence to make an award for the rent for March 2012.

For the same reason, I decline to award the landlord the filing fee for this proceeding.

As empowered by section 72 of the *Act*, I authorize the landlord to retain the security deposit 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:

Rent for September 2012	\$300.00
Rent for November 2012	<u>300.00</u>
Sub total	\$900.00
Less retained security deposit (No interest due)	- 300.00
Less retained pet damage deposit	<u>- 150.00</u>
TOTAL	\$450.00

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.

In addition to authorization to retain the security deposit and pet damage deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$450.00**, 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 20, 2012.

Residential Tenancy Branch