



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 landlords on October 17, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by express mail on October 2, 2012 and received on October 3, 2012. The landlord also sought a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding and 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 an Order of Possession and monetary award as requested.

Background and Evidence

This tenancy began on July 1, 2012. Rent is \$800 per month and the landlords hold a security deposit of \$400 paid on June 17, 2012.

At the commencement of the hearing, the landlords advised that the tenant had paid the rent for October, November and December of 2012 on November 16, 2012, substantially beyond the five-day grace period following service of the Notice to End Tenancy permitted under section 46 of the *Act*.

The landlords stated that even though the rent had been paid, they continued to request an Order of Possession, citing the tenant having not put utilities in her name as promised until November in the case of hydro and not as yet in the case of natural gas.

The tenant stated that she had fallen behind in the rent because of an unanticipated delay in payment of maternity leave benefits and noted that the rent was now paid in full and she had every intention of compensating the landlords for the utilities.

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 pay the rent, but several weeks beyond receiving the notice which she did not make application to dispute. Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy would end under the notice.

Accordingly, I must find that the landlords are entitled to the Order of Possession to take effect on December 31, 2012 as requested.

As the application has succeeded on its merits, I find the landlords are also entitled to recover the filing fee for this proceeding and, as empowered by section 72 of the *Act*, I authorize them to retain \$50 from the tenant's security deposit for that purpose..

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 December 31, 2012. The landlords may retain \$50 from the tenant's security deposit in recovery of their filing fee for this proceeding.

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 21, 2012.

Residential Tenancy Branch