



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR and FF

Introduction

This application was brought by the landlord on October 3, 2012 seeking 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 amend the application to include a request for an Order of Possession taking into account previous hearings on this matter and confusion arising from the fact that an Order of Possession had previously been issued. As the facts of the matter make it abundantly obvious that the landlords intended to seek possession, I find that the tenants are in no way prejudiced by the amendment.

As a matter of note, the landlords served a second Notice to End Tenancy for unpaid rent in person on October 19, 2012.

Despite having been served with the present Notice of Hearing in person with witnesses on October 3, 2012, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Similarly, as the application was made in October 2012, and the landlords now claim unpaid rent for November 2012, I have amended the application accordingly.

Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to an Order of Possession and Monetary Order as requested.

Background and Evidence

This tenancy began on September 1, 2012 under a six-month fixed term rental agreement at a monthly rent of \$2,300.

While the tenants agreed to a security deposit of \$1,150, the landlords gave evidence that it was never paid.

During the hearing, the landlords gave evidence that the Notice to End Tenancy of September 13, 2012 was served when the tenants had failed to pay the rent for September 2012.

The landlords applied for and were awarded with an Order of Possession and a Monetary Order for the unpaid rent for September 2012 by way of a Direct Request Proceeding on September 28, 2012, a proceeding based on written submissions only in routine applications arising from unpaid rent.

The tenants applied for and were granted a Review Hearing granted by decision issued on October 9, 2012 on the claim that they had not been served with the Notice to End Tenancy or the Notice of Direct Request Proceeding, and a claim of their ability and intention to pay the rent throughout.

The Review Hearing was conducted on November 13, 2012, and the Dispute Resolution Officer found that the landlords had not properly tendered the tenants' cheque for the September rent at the tenants' bank, but had only relied on advice from their own bank that the tenants bank had advised that the cheque would not clear.

He noted advice from the parties that the landlords had made the present application and that the hearing scheduled for November 22, 2012 could deal with claims for October and November 2012 rent.

He further recorded a promise made by the tenant that he would provide the landlord with a bank draft on November 14, 2012 for the full rent for October and November 2012.

During the present hearing, the landlords gave evidence that when they attempted to cash the September 2012 rent cheque at the tenants' bank as directed, they were advised that the account had been closed.

When the landlord drove from Nanaimo to Victoria to pick up the promised bank draft for October and November rents on November 14, 2012, the tenant did not keep their

appointment and all of three months' rent remained unpaid at the time of the present hearing.

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 tenants 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 tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notices to End Tenancy, September 26, 2012 in the case of the first Notice and October 29, 2012 in the case of the second notice.

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 and recovery of the filing fee for this proceeding (although I cannot include the fee for the previous file as requested).

Thus, I find that the tenants owe the landlord an amount calculated as follows:

September 2012	\$2,300.00
November 2012 rent	2,300.00
Filing fee	<u>50.00</u>
TOTAL	\$6,950.00

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, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$6,950.00**, enforceable through the Provincial Court of British Columbia, for service on each of the tenants.

While it would appear to be self evident, I find that the tenants have been deceptive in their representations to the landlords and in their application for review consideration and during the review hearing.

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 22, 2012.

Residential Tenancy Branch