



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 17, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on October 2, 2012. The landlord also sought a Monetary Order for unpaid rent, late fees 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 and pet damage deposits in set off against the balance owed.

Despite having been served with the Notice of Hearing in person on October 19, 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.

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 November 1, 2006. Rent is \$1008 per month including parking and the landlord holds a security deposit of \$427.50 and a pet damage deposit of \$200, both paid on October 31, 2006.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 2, 2012 had been served after the tenants had not paid the rent due on October 1, 2012. In the interim, the tenants remain in the rental unit and have not paid the rent due on November 1, 2012.

Therefore, the landlord requests an Order of Possession and a Monetary Order for the unpaid rent plus late fee of \$20 for each of the two months as set out in the rental agreement.

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 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 tenants.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for October and November of 2012, late fees for each month and recovery of the filing fee for this proceeding. As authorized under section 72 of the *Act*, I order that the landlord retain the security and pet damage deposits plus interest in set off against the unpaid rent.

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

October 2012 rent	\$ 1,008.00
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Late fees of \$20 for each of the two months	40.00
Filing fee	<u>50.00</u>
Sub total	\$2,106.00
Less retained security deposit	- 427.50
Less interest from October 31, 2006 to date	- 13.30
Less retained pet damage deposit	- 200.00
Less interest from October 31, 2006 to date	<u>- 6.22</u>
TOTAL	\$1,458.98

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 tenants.

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 **\$1,458.98**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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