



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on October 24, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by registered mail SENT on October 5, 2012.

The landlord also seeks a monetary award 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 26, 2012, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his 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 August 1, 2008. Rent is \$375 per month and the landlord holds a security deposit of \$187.50 paid on or about August 1, 2008.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy of October 5, 2012 had been served when the tenant had not paid the rent due on October 1, 2012. In the interim, the tenant remains in the rental unit and has not paid the rent due November 1, 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, taking into account five days for deemed service of notice served by mail, was October 15, 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 October 2012 and November 2012, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

October 2012 rent	\$375.00
Filing fee	<u>50.00</u>
Sub total	\$800.00
Less retained security deposit	- 187.50
Less interest (August 1, 2008 to date)	- <u>1.18</u>
TOTAL	\$611.32

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 in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$611.32**, 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 29, 2012.

Residential Tenancy Branch