



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 31, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on October 12, 2012. The landlord also sought a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the tenants' 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 a an Order of Possession and monetary award as requested.

Background and Evidence

This tenancy began on January 1, 2011. Rent is \$1,300 per month and the landlord holds a security deposit of \$650 paid at the beginning of the tenancy.

As the commencement of the hearing, the landlord advised that he had met with the tenants and that they had proposed a repayment program to bring outstanding rent and utilities up day date by January 30, 2012.

The landlord stated that it was his wish and expectation that the tenants would in bringing the account up to date and that he was willing to give them the opportunity to do so. However, he said in the event the tenants were not able to pay of the arrears, he asked for an Order of Possession to take effect on January 31, 2012 and a monetary award for the unpaid rent and utilities to December 31, 2012 and authorization to retain the security deposit in set off.

The parties agreed that taking into account unpaid rent and utilities to the end of December 2012, the tenants now owe the landlord \$3,796.

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 22, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on January 31, 2012, as he requested, to be served and enforced as the landlord chooses if the rent arrears is not extinguished as promised.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and utilities in the amount the parties agreed to during the hearing: \$3,796.00. I also award the landlord recovery of the filing fee for this proceeding and, as empowered by section 72 of the *Act*, I authorize the landlord to retain the security deposit plus interest in set off against the unpaid rent.

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

Unpaid rent and utilities to December 31, 2012	\$3,796.00
Sub total	\$3,846.00
Less retained security deposit (No interest due)	<u>- 650.00</u>
TOTAL	\$3,196.00

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 at 1 p.m. on January 31, 2012 for service on the tenants.

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 **\$3,196.00**, 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: December 04, 2012.

Residential Tenancy Branch