



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 November 20, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on November 9, 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.

Despite having been served with the Notice of Hearing served by registered mail on November 22, 2012, the tenant did not call in to the number provided to enable is participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issue(s) to be Decided

This application 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 October 26, 2012 under a fixed term rental agreement set to end on April 30, 2012. Rent is \$710 per month and the landlord holds a security deposit of \$355 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that, on October 26, 2012, the tenant had paid the security deposit with a money order and that he had paid the first month's rent with a cheque written on a bank account that had been closed.

In the interim, the tenant remains in the rental unit, the November 2012 rent remains unpaid, and the tenant has not pay the rent due on December 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 was November 22, 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 November and December of 2012, 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 tenant owes to the landlord an amount calculated as follows:

Rent for November 2012	\$ 710.00
Filing fee	<u>50.00</u>
Sub total	\$1,470.00
Less retained security deposit (No interest due)	<u>- 355.00</u>
TOTAL	\$1,115.00

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 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 **\$1,115.00**, 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: December 20, 2012.

Residential Tenancy Branch