



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 21, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on October 31, 2012. The landlord also sought a monetary award 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 sent by registered mail on November 21, 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 August 1, 2012. Rent is \$950 per month including utilities and the landlord holds a security deposit of \$475 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 31, 2012 had been served when the tenants had failed to pay any of the rent due on October 1, 2012.

In the interim, the October rent remains unpaid and the tenants have not paid rent for November or December of 2012. The landlord who lives in another city stated that his representative in the city in which the rental unit is located has advised him in the last couple of weeks that the tenants continued to live in the rental unit.

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 November 13, 2012. (As the notice to end was served by posting, it is deemed under section 90 of the *Act* to have been received three days later with an effective date 10 days later.)

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, November and December of 2012. However, as the landlord was uncertain as to whether the tenants remained in the residence at the time of the hearing, and as I cannot predict whether the landlord will have new tenants in January 2013, I cannot make an award as yet for the month.

However, the landlord remains at liberty to make a further application for the January 2013 rent if appropriate and for any damages as may be ascertained when he has regained possession of the rental unit.

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

Rent for October 2012	\$ 950.00
Rent for November 2012	950.00
Rent for December 2012	950.00
Filing fee	<u>50.00</u>
Sub total	\$2,900.00
Less retained security deposit (No interest due)	<u>- 475.00</u>
TOTAL	\$2,425.00

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 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 **\$2,425.00**, 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: January 02, 2013.

Residential Tenancy Branch