



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 23, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by registered mail sent on November 12, 2012. The landlord also sought a monetary award for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on November 23, 2012, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her 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

According to the landlord, this tenancy began about six years ago. Therefore, I have arbitrarily set January 1, 2006 as the payment date for the purpose of calculating interest on the security deposit.

Rent is \$800 per month landlord holds a security deposit of \$200 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 12, 2012 had been served by registered mail when the tenant had accumulated a growing rent shortfall that had reached \$1,486 by November 1, 2012.

The landlord stated that he had subsequently received partial payments of \$438 on November 19, 2012 and December 19, 2012 but had received none of the rent due January 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 27, 2012, taking into account five days for deemed service of notice served by registered mail.

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, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed..

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

Rent owed to landlord		
Rent and arrears due November 1, 2012	\$1,486.00	
Rent for December 2012	800.00	
Rent for January 2013	<u>800.00</u>	
Sub total	\$3,086.00	3,086.00
Less tenant's credits		
Security deposit	\$200.00	
Interest from January 1, 2006	7.08	
Payment made November 19, 2012	438.00	
Payment made December 19, 2012	438.00	
Filing fee	<u>50.00</u>	
Sub total	\$1,133.08	- 1,133.08
TOTAL		\$1,952.92

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 **\$1,952.92**, 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: January 04, 2013.

Residential Tenancy Branch



Residential Tenancy Branch

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Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca