



Dispute Resolution Services

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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 December 14, 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 November 4, 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 December 17, 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.

The landlord submitted into evidence a copy of a receipt dated January 3, 2013 acknowledging payment of \$7,000 which covered the rent arrears and rent for January 2013. The receipt stated that the payment had been accepted for use and occupancy only, indicating that acceptance did not constitute reinstatement of the tenancy; however, at present, there are no grounds for a monetary award.

Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to an Order of Possession and the effective date.

Background and Evidence

This tenancy began on August 1, 2012. Rent is \$2,300 per month and the landlord holds a security deposit of \$650 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 4, 2012 had been served when the tenants had failed to pay any of the rent due on November 1, 2012. At the time of his application on December 14, 2012, the November rent remained unpaid, the tenants remained in the rental unit, and had paid no rent for December 2012. At that point, the landlord claimed two months' rent at \$2,300, a total of \$4,600.

The landlord stated that the tenants paid the arrears and the rent for January on January 3, 2013, a total of \$7,000. However, as indicated on the receipt indicating the payment was accepted for use and occupancy only, the landlord stated that he did not wish to reinstate the tenancy and continued his request for the Order of Possession.

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 tenants 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 17, 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. The landlord stated that as January rent had been paid, he wished to have vacant possession by January 31, 2013 but asked that the Order have an earlier date in order to allow sufficient time to engage the court bailiff if necessary.

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 recover the filing fee for this proceeding from the tenants.

As the tenants owed three months rent at \$2,300 per month, a total of \$6,900, and actually paid \$7,000 on January 3, 2012, I find that the landlord has been paid the cost of his filing fee. The landlord also requested to recover the filing fee from a previous hearing; however, I have no authority to make an award related to a previous hearing nor is there provision in the legislation to award the costs of registered mail as requested by the landlord.

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.

The landlord has recovered the filing fee for this proceeding from funds already paid to him by 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 16, 2013

Residential Tenancy Branch

