



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services

DECISION

Dispute Codes

Landlord: OPR, MNR and FF
Tenants: CNR

Introduction

This hearing was convened on applications by both the landlord and the tenants.

By application of January 21, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on January 14, 2013. The landlord also sought a monetary award for unpaid rent. In addition, I have exercised the discretion granted under section 64(3)(c) of the Act to permit the landlord to amend their application to request authorization to retain the tenants' security deposit in set off against the balance owed.

By application of January 23, 2012, the tenants sought to have the Notice to End Tenancy set aside.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested or whether the notice to end tenancy should be set aside.

Background and Evidence

This tenancy began on January 20, 2012. Rent is \$850 per month and the landlord holds a security deposit of \$425 paid at the beginning of the tenancy.

During the hearing, the landlord's agent gave evidence that his company had recently taken over management of the rental building. He stated that the Notice to End Tenancy of January 14, 2013 had been served when it was noted that the tenants had carried a rent shortfall at the end of 2012 of two months' rent.

In the interim, the tenants remain in the rental unit and their rent cheque for February 2013 has been returned as NSF.

The attending tenant concurred that the tenants owed two months' rent from the latter part of 2012, but stated that they had arrived at a repayment/catch up schedule with the previous property manager. He also acknowledged the February 2013 rent was not paid.

The agent stated that he had searched the tenants' file and found no record of an agreement to allow the tenants to catch up on the rent arrears.

Noting that the unpaid rent had continued to grow in February, the landlord requested an Order of Possession and a Monetary Order for all of the unpaid rent.

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 their application to contest it was made four days after the five day time limit in which such applications can be made.

Therefore, the tenants' application is dismissed without leave to reapply

Accordingly, 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 January 24, 2013.

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 award for all of the unpaid rent.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

In addition, as authorized under section 72 of the *Act*, I find that the landlord may retain the security deposit in set off against the unpaid rent.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Rent shortfall from 2012	\$ 1,700.00
Rent for February 2013	850.00
Filing fee	<u>50.00</u>
Sub total	\$2,600.00
Less retained security deposit (no interest due)	<u>- 425.00</u>
TOTAL	\$2,175.00

Conclusion

The tenants' application is dismissed without leave to reapply.

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 accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$2,175.00** 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: February 15, 2013

Residential Tenancy Branch

