



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 hearing was convened on an application made by the landlord on January 22, 2013 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by posting on the tenant's door on January 9, 2013. The landlord also sought a Monetary Order for the unpaid rent, late fees and recovery the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on January 25, 2013, the tenant did not call in to the number provided to enable his 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 a Monetary Order as requested.

Background and Evidence

This tenancy began on June 15, 2012. Rent is \$1,995 per month, subject to a \$25 late fee as set out in the rental agreement, and the landlord holds a security deposit of \$997.50 paid on June 11, 2012.

During the hearing, the landlord's agents gave evidence the Notice to End Tenancy had been served after the tenant had failed to pay the \$1,995 rent due on January 1, 2013 and still owed \$5 of a \$25 late fee from December 2012.

In the interim, the tenant remains in the rental unit, the January rent remains unpaid and the tenant has not paid rent due on February 1, 2013.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent for January 2013 and February 2013, plus \$25 late fee for each of the two months, the \$5 remaining from the December late fee, recovery of the filing fee for his proceeding and authorization to retain the security deposit in set off.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due whether or not the landlord is in compliance with the legislation or rental agreement.

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. 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 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) & (6) 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 January 22, 2013 taking into account the three days for deemed service of notice served by posting.

Accordingly, I find that the landlord is entitled to an Order of Possession effective 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 and late fees, recovery of the filing fee for this proceeding and, as permitted under section 72 of the *Act*, authorization to retain the security deposit in set off, calculated as follows:

Remainder of December 2012 late fee	\$ 5.00
Rent for January 2013	1,995.00
Late fee	25.00
Rent for February 2013	1,995.00
Late fee	25.00
Filing fee	<u>50.00</u>
Subtotal	\$4,095.00
Less retained security deposit (No interest due)	<u>- 997.50</u>
TOTAL	\$3,097.50

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 accompanied by a Monetary Order for **\$3,097.50**, 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: February 18, 2013

Residential Tenancy Branch

