



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

This hearing was convened on an application made by the landlord on January 28, 2013 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by posting on the tenants' door on January 16, 2013. The landlord also sought a Monetary Order for unpaid rent, loss of rent, late fee, recovery of 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 30, 2013, the tenants did not call in to the number provided to enable their participation in the telephone conference call proceeding. Therefore, it proceeded in their absence.

At the commencement of the hearing, the landlord gave evidence that, after receiving a reference enquiry and after posting 24-hour notice, she attended the rental unit on February 6, 2013 and found that the tenants had vacated. Therefore, she withdrew the request for an Order of Possession.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested with authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on November 1, 2012. Rent was \$900 per month and the landlord holds a security deposit of \$450 paid on October 30, 2012.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenants had failed to pay the \$900 rent due on January 1, 2013.

In the interim, the January rent remained unpaid, the tenants remained in the rental unit, vacated without notice or providing a forwarding address and did not pay rent for February 2013.

Therefore, the landlord requested a Monetary Order for the unpaid rent for January 2013, and loss of rent for February 2013, \$25 late fee for both months, filing fee 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.

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 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) & (6) of the *Act*, the tenant were conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was January 30, 2013 taking into account the three days deemed service of documents served by posting.

As the tenants departure was confirmed on February 6, 2013, I find that the tenancy has ended.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for and late fee for January and, as the tenants left without notice, the landlord is entitled to loss of rent for February 2013.

However, as the award for February 2013 is for loss of rent rather than rent, I cannot award the late fee for that month. 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 and, as authorized under section 72 of the *Act*, I order that the landlord may retain the security deposit in set off against the balance owed.

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

Rent for January 2013	\$ 900.00
Late fee for January 2013	25.00
Loss of rent for February 2013	900.00
Filing fee	<u>50.00</u>
Subtotal	\$1,875.00
Less retained security deposit (No interest due)	<u>- 450.00</u>
TOTAL	\$,1425.00

Conclusion

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 **\$,1425.00**, 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: February 22, 2013

Residential Tenancy Branch

