



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 9, 2013 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by posting on the tenants door on December 7, 2012. The landlord also sought a Monetary Order for unpaid rent, loss of rent and 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 12, 2013, the tenant did not call in to the number provided to enable his participation in the telephone conference call proceeding. 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 and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on August 16, 2012. Rent is \$375 per month and the landlord holds a security deposit of \$187.50 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenant had failed to pay the \$375 rent due on December 1, 2012.

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

Therefore, the landlord requested a Monetary Order for the unpaid rent for December 2012 and January 2013, and loss of rent for one-half of February 2013 as time for service and preparation of the rental unit make a new tenancy before February 15, 2013 a practical impossibility.

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) & (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 December 20, 2012, taking into account the three days deemed service of documents 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 loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, calculated as follows:

| | |
|--|-----------------|
| Rent for December 2012 | \$375.00 |
| Rent for January 2013 | 375.00 |
| Rent /loss of rent for February 2013 | 187.50 |
| Filing fee | <u>50.00</u> |
| Subtotal | \$987.50 |
| Less retained security deposit (No interest due) | <u>- 187.50</u> |
| TOTAL | \$800.00 |

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 **\$800.00**, 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 01, 2013

Residential Tenancy Branch

