



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

This hearing was convened on an application made by the landlord on January 16, 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 3, 2012. The landlord also sought a Monetary Order for unpaid rent.

In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to amend the application to include a request to 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 18, 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.

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 September 1, 2012. Rent is \$700 per month and the landlord holds a security deposit of \$350 paid on August 31, 2012.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenants had failed to pay the \$700 rent due on January 1, 2013.

In the interim, the tenants remain in the rental unit, the January rent remains unpaid and the tenants have 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, 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.

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) & (6) 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 16, 2013, 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 tenants.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent , recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, calculated as follows:

Rent for January 2013	\$ 700.00
Rent for February 2013	700.00
Filing fee	<u>50.00</u>
Subtotal	\$1,450.00
Less retained security deposit (No interest due)	<u>- 350.00</u>
TOTAL	\$1,100.00

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 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 for **\$1,100.00**, 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 12, 2013

Residential Tenancy Branch

