



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

Introduction

This hearing was convened on an application made by the landlord on January 17, 2013 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on January 10, 2013. The landlord also sought a Monetary Order for unpaid rent, recovery the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

As a matter of note, the tenant stated that his name had been spelled incorrectly on the application was corrected accordingly without objection from the landlord.

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 October 1, 2011. Rent is \$820 per month and the landlord holds a security deposit of \$410 paid on October 1, 2011.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenant had failed to pay the \$820 rent due on January 1, 2013.

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, the filing fee for his proceeding and authorization to retain the security deposit in set off.

The landlord also requested a late fee of \$25 for each of the two months, but there does not appear to be an agreement for late fees on either the rental agreement or the addendum to it. Therefore, I cannot consider this part of the claims.

The tenant stated he had paid \$400 of the January 2013 rent, but the landlord stated he had offered that much, but it had been declined until the tenant paid the full rent.

The tenant also stated that he had not paid the rent because there was a bed bug infestation in the rental unit. The landlord said that a pest control company had come to inspect and treat for bed bugs, but the tenant had refused entry.

While there are remedies available to tenants under the *Act* to deal with bed bug infestations, there is no provision that would permit the withholding of rent.

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 20, 2013.

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 and 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	\$ 820.00
Rent for February 2013	820.00
Filing fee	<u>50.00</u>
Subtotal	\$1,690.00
Less retained security deposit (No interest due)	<u>- 410.00</u>
TOTAL	\$1,280.00

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 **\$1,280.00**, 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

