



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC and FF

Introduction

This hearing was convened on an application made by the landlord on January 29, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on January 20, 2013. The landlord also sought a Monetary Order for the unpaid rent, damage or loss under the legislation or rental agreement, and recovery the filing fee for this proceeding.

In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend the application to include a request for authorization to retain the security deposit in set off against the balance owed.

As a preliminary matter, the landlord had named two tenants on the application. However, the primary tenant stated that the other tenant, his adult step-son, was not a signatory to the rental agreement and had only stayed with him for part of the tenancy as a guest or occupant and left three months ago. In addition, his name had been struck from the tenancy agreement and the change initialled prior to signing. Therefore, the application is amended to name the primary tenant as the sole respondent.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a monetary award as requested.

Background and Evidence

This tenancy began on August 18, 2011. Rent is \$1,100 per month, due on the 1st, and the landlord holds a security deposit of \$550 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 \$1,100 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. The tenant acknowledged that the rent was in arrears as stated by the landlord.

Therefore, the landlord requested an Order of Possession and a monetary award for the unpaid rent for January 2013 and February 2013 recovery of the filing fee for his proceeding and authorization to retain the security deposit in set off.

The landlord also submitted three claims placed on her account by the strata corporation for two \$100 fines for materials left in the hallway which tenant stated was his bicycle, and \$140 for removal of a mattress/box spring the tenant was said to have placed by the dumpster. The tenant stated that the mattress/box spring set was not his but had been left in the parking area and that his son-in-law had placed it by the dumpster with the intention of performing an act of community service.

The landlord stated that she has written to the strata council asking for reconsideration of the fines on the grounds submitted by the tenant, but has yet to receive a reply.

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 30, 2013.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant and the tenant promised to vacate on or before February 28, 2013..

As to the outstanding fines from the strata council, as the claim appears to remain under negotiation, it is dismissed with leave to reapply when the landlord has received a definitive response to her request for reconsideration from the strata council.

I find that the landlord is entitled to a monetary award for the unpaid rent, 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:

Rent for January 2013	\$1,100.00
Rent for February 2013	1,100.00
Filing fee	<u>50.00</u>
Subtotal	\$2,250.00
Less retained security deposit (No interest due)	<u>- 550.00</u>
TOTAL	\$1,700.00

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 **\$1,700.00**, 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 21, 2013

Residential Tenancy Branch

