



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 30, 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 2, 2013. The landlord also sought a Monetary Order for unpaid rent, 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 on February 3, 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 February 1, 2012. Rent is \$950 per month and the landlord holds a security deposit of \$475 paid on January 25, 2012.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenants had a rent shortfall from December 2012 of \$475 and had failed to pay the \$950 rent due on January 2013.

In the interim, the tenants remain in the rental unit, the December shortfall and January rent remain 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 December 2012 shortfall and the full rent for January and February 2013.

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 12, 2013.

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, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, calculated as follows:

Rent shortfall for December 2012	\$ 475.00
Rent for January 2013	950.00
Rent /loss of rent for February 2013	950.00
Filing fee	<u>50.00</u>
Subtotal	\$2,425.00
Less retained security deposit (No interest due)	<u>- 475.00</u>
TOTAL	\$1,950.00

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 **\$1,950.00**, 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 25, 2013

Residential Tenancy Branch

