



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Thunderbird Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD and FF

Introduction

This hearing was convened on an application by the landlord received on February 8, 2013 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person and by posting on the tenant's door on January 23, 2013. The landlord also sought a Monetary Order for the unpaid rent, recovery the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

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.

Background and Evidence

According to the landlord, this tenancy began on August 1, 2012 at \$600 per month rent and the landlord holds a security deposit of \$300.

The tenant argued that rent is \$550 per month but the landlord stated that while the tenant had paid only \$550 per month, the rental agreement set the rent at \$600. The landlord said the rental agreement was not available she had loaned her copy to the tenant who had lost hers to assist the tenant's dealings with social services.

As a matter of note, after cautioning the tenant that it might be necessary to do so, I had to mute her line on the telephone conference call hearing three times as she repeatedly embarked on a loud, continuous monologue that made it impossible for me or the landlord to speak.

During the hearing, the landlord gave evidence that she had served the Notice to End Tenancy on January 23, 2013 when the tenant had failed to pay rent due on December 1, 2012 and January 1, 2013. In the interim, the tenant remains in the rental unit, the December and January rents remain unpaid and the tenant has paid no rent for February or March of 2013. The tenant concurred that she had not paid the rent for February and March, but claims that she did pay the rent for December and January.

The landlord requested an Order of Possession and a Monetary Order for the unpaid rent for December 2012, and January, February and March of 2013, recovery of 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 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 February 2, 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 and I find the landlord to be more credible as to the number of months for which rent is owed.

However, in the absence of a copy of the rental agreement, and on the landlord's statement that she had accepted \$550 from September to November 2012 without having taken action, I find the tenant should receive the benefit of the doubt as to the monthly amount.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent for December 2012	\$ 550.00
Rent for January 2013	550.00
Rent for February 2013	550.00
Rent for March 2013	550.00
Filing fee	<u>50.00</u>
Subtotal	\$2,250.00
Less retained security deposit (No interest due)	<u>- 300.00</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 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 **\$1,950.00**, 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: March 05, 2013

Residential Tenancy Branch

