



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR and FF

Introduction

The application for this hearing was made by the landlord on March 4, 2013 asking for an Order of Possession in support of a Notice to End Tenancy for unpaid rent served by posting on the tenant's door on February 20, 2013. The landlord also requested a Monetary Order for the unpaid rent and recovery of his filing fee.

As a matter of note, the landlord has named only one respondent tenant on his application, though he has named two on the rental agreement and Notice to End Tenancy. While I cannot amend the application to or add the second party's name on the decision and orders, any Order of Possession would apply to all occupants of the rental unit. Given that the tenants are jointly and severally responsible for payment, either may be named on a Monetary Order and they may apportion the monetary claim between themselves if necessary.

Despite having been served with the Notice of Hearing in person on March 6, 2013, the tenant(s) 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.

Background and Evidence

This tenancy began on November 1, 2012. Rent is \$850 per month and the landlord holds a security deposit of \$425 but declined to request authorization to set it off against the unpaid rent.

During the hearing, the landlord gave evidence the Notice to End Tenancy of February 20, 2013 had been served after the tenants had accumulated a rent shortfall of \$1,000 since December 2012.

In the interim, the tenants remain in the rental unit, have paid only \$600 of the rent for March 2013 and, after a credit of \$136 for approved expenditures on the rental unit, they added \$114 to the shortfall.

Therefore, the landlord requested the Order of Possession and a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

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 tenant 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 tenant are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was January 5, 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 tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and recovery of the filing fee for this as follows:

Rent shortfall to February 28, 2013	\$1,000.00
Rent shortfall for March 2013 (\$850, less \$600 paid and \$134 credit)	114.00
Filing fee	<u>50.00</u>
TOTAL	\$1,164.00

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.

The landlord's copy of this decision is accompanied by a Monetary Order for **\$1,164.00**, 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 28, 2013

Residential Tenancy Branch

