



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD and FF

This hearing was convened on an application by the landlord on February 14, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on February 4, 2013. The landlord also sought a Monetary Order for the unpaid rent, loss of rent, recovery 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 in person and by registered mail on February 19, 2013, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his 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 award as requested.

Background and Evidence

This tenancy began on December 1, 2012. Rent is \$2,500 per month and the landlord holds a security deposit of \$1,250 paid on October 29, 2012.

During the hearing, the landlord and her agent gave evidence that the Notice to End Tenancy of February 4, 2012 has been served when the tenant had a rent shortfall of \$1,500 from the January 2013 rent and had failed to pay any of the rent due on February 1, 2013.

In the interim, the January shortfall and February rent remain outstanding, the tenant has not paid the rent due on March 1, 2013 and the tenant remains in the rental unit

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent, 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 14, 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 given that the present hearing is on March 11, 2013 and the landlord will have no reasonable chance of finding a new tenant in the current month, I find that the award should include loss of rent to the end of March 2013. The landlord is also entitled to recover the \$100 filing fee for this proceeding from the tenant.

In addition, as authorized under section 72 of the *Act*, I order that the landlord retain the security deposit in set off against the balance owed.

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

Rent for shortfall for January 2013	\$1,500.00
Rent February 2013	2,500.00
Rent/loss of rent for March 2013	2,500.00
Filing fee	<u>100.00</u>
Subtotal	\$6,600.00
Less retained security deposit (No interest due)	<u>- 1,250.00</u>
TOTAL	\$5,350.00

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 **\$5,350.00**, 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 11, 2013

Residential Tenancy Branch

