



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.
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 21, 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 February 8, 2013. The landlord also sought a monetary award for the unpaid rent, late fees, parking, 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 sent by registered mail on February 22, 2013, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her 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 6, 2011. Rent is \$970 per month plus \$45 per month parking and the landlord holds a security deposit of \$485 paid at the beginning of the tenancy.

During the hearing, the landlord the Notice to End Tenancy of February 8, 2013 had been served when the tenant had failed to pay the rent due on February 1, 2013.

In the interim, the landlord stated that the tenant had paid both the February 2013 and March 2013 rent on March 15, 2013.

However, the landlord issued a receipt with the notation, "for use and occupancy only," indicating that acceptance of the late rent did not reinstate the tenancy and the landlord continued her request for the Order of Possession.

The landlord also continued her request to recover the filing fee for this proceeding.

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.

Notices served by posting is deemed to have been received three days later which would have been February 11, 2013 giving the tenant until February 16, 2013 to pay the rent or make application to contest the notice. The rent was not paid until a month later.

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 21, 2013.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant as requested.

I further find that the landlord is entitled to recover the filing fee for this proceeding from the tenant and, as authorized under section 72 of the *Act*, I order that the landlord retain \$50 from the tenant's security deposit for that purpose.

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.

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 19, 2013

Residential Tenancy Branch

