



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR and FF

Introduction

This hearing was convened on an application made by the landlord on March 4, 2013 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by posting on the tenants' door on February 19, 2013. The landlord also sought a Monetary Order for the unpaid rent and recovery the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on March 5, 2013, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. 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 June 1, 2012 at rent of \$1,300 per month and the tenants paid a security deposit of \$650 on May 22, 2012.

During the hearing, the landlord submitted into evidence a copy of a written agreement made by the parties on January 30, 2013 that the security deposit would be applied to the rent for January 2013 along with payment of \$650. Under the agreement, the tenants were permitted to delay payment of the rent for February until February 15, 2013, when they would also restore the security deposit.

The landlord stated that the tenants did not make the payments as promised, he issued the Notice to End Tenancy dated February 20, 2013.

In the interim, the tenants remain in the rental unit, the February 2013 rent has not been paid and the tenants have not paid the rent due on March 1, 2013.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent for February 2013, and March 2013 and recovery of the filing fee for his 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 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 March 4, 2013 taking into account the three days for deemed service of notice 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 filing fee for this proceeding as follows:.

Rent for February 2013	\$1,300.00
Rent for March 2013	1,300.00
Filing fee	<u>50.00</u>
TOTAL	\$2,650.00

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 **\$2,650.00**, 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: March 27, 2013

Residential Tenancy Branch

