



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC and FF

Introduction

This hearing was convened on an application by the landlord on February 14, 2013 seeking an Order of Possession pursuant to a 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 and recovery the filing fee for this proceeding.

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 October 1, 2011 under a one year fixed term agreement which defaulted to a month to month tenancy on October 1, 2012. Rent is \$1,675 per month and the landlord holds a security deposit of \$812.50 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that she had served the Notice to End Tenancy on February 4, 2013 when the tenants had failed to pay rent the full rent due on January 1, 2013, owed a balance of \$1,250 for month, and had not paid the February 2013 rent.

In the interim, the tenants paid \$250 on February 8, 2013, but had paid no rent for March 2013, and the tenants remain in the rental unit.

The attending tenant concurred with the amounts of the unpaid rent as submitted by the landlord and stated that he anticipated an income tax refund in the very near future that he believed would bring the account up to do date.

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 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 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 filing fee.

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	\$1,250.00
Rent shortfall for February 2013 (\$1,675 - \$250 paid Feb.8/13)	1,425.00
Rent for March 2013	1,675.00
Filing fee	<u>50.00</u>
Subtotal	\$4,400.00
Less retained security deposit (No interest due)	<u>- 812.50</u>
TOTAL	\$3,587.50

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 **\$3,587.50**, 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 08, 2013

Residential Tenancy Branch

