



Dispute Resolution Services

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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 10-day Notice to End Tenancy for unpaid rent served in person on January 30, 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 February 19, 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

There is not written rental agreement but the landlord gave evidence that this tenancy began on or about March 1, 2010. Rent is \$650 per month and the landlord holds a security deposit of \$325 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been issued after the tenant had an accumulated rent shortfall over much of the tenancy and had paid none of the rent due on January 1, 2013.

In the interim, the tenant remains in the rental unit, has had failed to pay any of the outstanding rent and has not paid the rent due on February 1, 2013 or March 1, 2013.

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 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 December 2010	\$ 150.00
Rent shortfall for May 2011	250.00
Rent shortfall for April 2012	300.00
Rent shortfall for May 2012	50.00
Rent shortfall for June 2012	200.00
Rent shortfall for July 2012	325.00
Rent shortfall for December 2012	300.00
Rent for January 2013	650.00
Rent for February 2013	650.00
Rent for March 2013	650.00
Filing fee	<u>50.00</u>
Subtotal	\$3,575.00
Less retained security deposit (No interest due)	<u>- 325.00</u>
TOTAL	\$3,250.00

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 **\$3,250.00**, 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 13, 2013

Residential Tenancy Branch

