



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, and FF

Introduction

This hearing was convened on an application by the landlords on February 20, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by registered mail sent on January 21, 2013. The landlords 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 20, 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 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 July 1, 2010 under a one year fixed term agreement which defaulted to a month to month tenancy on July 1, 2011. Rent is \$2,500 per month and the landlords hold a security deposit of \$1,250 paid at the beginning of the tenancy.

There was an adjustment to the rent made in December 2012 after the parties agreed to reverse and return to the tenants a rent increase to \$200 per month implemented on July 1, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenants' cheque for December 2012 was returned NSF and they had paid no rent for January 2013. After giving the tenants credit of \$3,600 for return of the 18 months' \$200 increase, the tenants owed \$1,800 for the January 2013 rent.

In the interim, the tenants remain in the rental unit, have paid only \$1,000 on February 8, 2013 and have paid none of the rent due on 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 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, taking into account the five days from deemed service of notice served by mail was February 5, 2013.

Accordingly, I find that the landlords are entitled to an Order of Possession effective two days from service of it on the tenants.

I further find that the landlords are 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 landlords retain the security deposit in set off against the balance owed.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Rent for shortfall for January 2013	\$ 1,800.00
Rent shortfall for February 2013 (after part payment Feb. 8, 2013)	1,500.00
Rent for March 2013	2,500.00
Filing fee	<u>100.00</u>
Subtotal	\$5,900.00
Less retained security deposit (No interest due)	<u>- 1,250.00</u>
TOTAL	\$4,650.00

Conclusion

The landlords' 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 landlords' copy of this decision is accompanied by a Monetary Order for **\$4,650.00**, 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 14, 2013

Residential Tenancy Branch

