



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR and FF

Introduction

This hearing was convened on an application made by the landlords on February 27, 2013 for an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting and leaving it with an adult occupant of the rental unit. The landlords also sought to recover the filing fee for this proceeding.

Despite having been served with the Notice of Hearing served to the female tenant in person and posted for the male tenant, both on February 27, 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 recovery of their filing fee as requested.

Background and Evidence

This tenancy began on December 1, 2012. Rent is \$1,300 per month and the landlords holds a security deposit of \$650 paid on November 25, 2012.

During the hearing, the landlord gave evidence that, after paying rent for December 2012 and January 2013 in two separate installments contrary to the rental agreement, the Notice to End Tenancy of February 13, 2013 was served when the tenants had failed to pay any of the rent for February 2013.

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

As a matter of note, the landlords served a second Notice to End Tenancy on February 27, 2017, a one-month notice for cause, after receiving several reports from neighbours of heavy traffic to the rental unit at late hours, and after having discovered that a number of unauthorized occupants had moved on to the rental property.

Following attendance by a by-law enforcement officer who confirmed occupants in another building on the property, not authorized for that use, attendance by police and a fire inspector, who identified a weapon, the residence was attended by the Emergency Response Team who removed drugs and a number of weapons.

Therefore, the landlord requested an Order of Possession to take effect as early as possible.

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 26, 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.

In view of the conduct of the tenants and their guests and substantial potential for endangerment of area residents and damage to the landlords' property, I set the effective date of the Order of Possession at 1 p.m. on Friday, March 22, 2013.

I confirm that the parties so named on this decision are the only tenants identified on the rental agreement and any persons residing on the property have no right to occupy the rental property under the *Residential Tenancy Act*.

As authorized under section 72 of the *Act*, I order that the landlords recover the filing fee for this proceeding by retaining \$50 from the tenants' security deposit.

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 at 1 p.m. on Friday, March 22, 2013. The order may be served by posting on the tenants' door on March 21, 2013.

The landlords' are authorized to retain \$50 from the tenants' security deposit to recover their filing fee for this proceeding.

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 21, 2013

Residential Tenancy Branch

