



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR and FF

Introduction

This application was brought by the landlord's agent on March 4, 2013 (amended March 5, 2013) seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by registered mail sent on February 4, 2013. The landlord also sought a monetary award for unpaid rent and loss of rent, recovery of the filing fee for this proceeding and authorization to retain the tenants' security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing in person on March 6, 2013, the tenants did not call in to the number provided to enable their participation in the telephone conference call proceeding. 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 month to month tenancy began on December 15, 2012. Rent is \$1,450 per month and the landlord holds a security deposit of \$725 paid at the beginning of the tenancy.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy had been served when the tenants had failed to pay the rent due on February 1, 2013.

The agent stated that the tenants remained in the rental unit at the time of the hearing, the February 2013 rent remains unpaid and, in the interim, the tenants have not paid the rent due on March 1, 2013 and April 1, 2013.

Therefore, the agent requested an Order of Possession and a Monetary Order for the unpaid rent. In addition, the agent stated that a recent inspection had indicated that the rental unit was in a state that made it highly improbable that she would be able to find new tenants in April and requested loss of rent for the full month.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

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. The 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) 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 19, 2013. (As the notice to end was served by registered mail, it is deemed under section 90 of the *Act* to have been received five days later with an effective date 10 days after receipt.)

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenants.

In the absence of any evidence to the contrary, I accept the evidence of the agent that the tenants have not paid the rent for February, March and April 2013 as claimed.

As to loss of rent for April 2013, as the hearing took place so early in the month, I must limit the award one-half month as it remains possible that a new tenancy could begin on April 16, 2013. However, the landlord remains at liberty to apply for the remainder of April 2013 if new tenants are not found by mid-month.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

In addition, as authorized under section 72 of the *Act*, I find that the landlord may retain the security deposit in set off.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Rent for February 2013	\$1,450.00
Rent for March 2013	1,450.00
Loss of rent for one-half of April 2013	725.00
Filing fee	50.00
Sub total	\$3,675.00
Less retained security deposit (no interest due)	- 725.00
TOTAL	\$2,950.00

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 landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$2,950.00** 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: April 02, 2013

Residential Tenancy Branch