



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vernon Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD and FF
Tenants: CNC and MNDC

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of March 21, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on March 5, 2013. The landlord also sought a monetary award for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the tenants' security deposit in set off against the balance owed.

By prior application of March 11, 2013, the tenant made sought to have a different Notice to End Tenancy set aside, a one-month notice for cause served by posting on the tenant's door on February 28, 2013, and a monetary award for unspecified damage or loss.

Despite having made application and having been served with the Notice of Hearing on the landlord's application, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, her application is dismissed without leave to reapply and the hearing proceeded in her absence.

Issue(s) to be Decided

The landlord's application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested with respect to the Notice to End Tenancy for unpaid rent or whether the notice should be set aside.

Background and Evidence

This tenancy began on April 15, 2012 under a 15-month fixed term agreement set to end on September 30, 2013. The tenant's share of rent is \$670 per month and the landlord holds a security deposit of \$600, one-half of market rent, paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that , after having been served with the Notice to End Tenancy for cause on February 28, 2013, the tenant had not paid the rent due on March 1, 2013 leading to service of the March 5, 2013 10-day Notice to End Tenancy for unpaid rent.

The landlord stated that, at the time of the hearing on April 4, 2013, the tenant remains in the rental unit, the March 2013 rent is still outstanding, and the tenant has not paid the rent due on April 1, 2013.

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 tenant did not pay the rent within five days of receiving the notice of March 5, 2013.

Accordingly, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was March 18, 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 to take effect two days from service of it on the tenant.

I further find that the landlord is entitled to a monetary award for the unpaid rent.

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 against the unpaid rent.

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

Rent for March 2013	\$670.00
Filing fee	50.00
Sub total	\$720.00
Less retained security deposit (no interest due)	- 600.00
TOTAL	\$120.00

Conclusion

On failure to participate in the hearing, the tenants' application is dismissed without leave to reapply. As the tenancy has ended on the notice for unpaid rent, I have found it unnecessary to canvass the evidence in support of the notice for cause.

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, enforceable through the Provincial Court of British Columbia for **\$120.00** for service on the tenant.

The landlord remains at liberty to make application for any damage or losses as may be ascertained on regaining possession of the rental unit.

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 04, 2013

Residential Tenancy Branch