



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on April 2, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on March 17, 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.

Despite having been served with the Notice of Hearing sent by registered mail on April 4, 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 and continued for 30 minutes.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a an Order of Possession and Monetary Order as requested.

Background and Evidence

This tenancy began on or about May 1, 2012. Rent is \$3,000 per month and the landlord holds a security deposit of \$1,500 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of March 17, 2013 had been served when the tenants had failed to \$2,500 of the rent due on December 1, 2012 followed by four months of partial or no rent payments.

He stated that the tenants had paid no rent for January or February 2013, paid only \$1,000 on March 26, 2013 and \$2,000 on April 5, 2013. The balance remains outstanding and the tenants continue to live in the rental unit.

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 tenant 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 March 30, 2013. (As the notice to end was served by posting, it is deemed under section 90 of the *Act* to have been received three days later, with an effective date 10 days beginning at deemed service.)

In the absence of any evidence to the contrary, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenants.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding and authorization to 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 shortfall for December 2012	\$ 2,500.00
Rent for January 2013	3,000.00
Rent for February 2013	3,000.00
Rent shortfall for March 2013 (after \$1,000 payment March 26, 2013)	2,000.00
Rent shortfall for April 2013 (after \$2,000 payment April 5, 2013)	1,000.00
Filing fee	<u>100.00</u>
Sub total	\$11,600.00
Less retained security deposit (No interest due)	<u>- 1,500.00</u>
TOTAL	\$10,100.00

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 landlord's copy of this decision is also accompanied by a Monetary Order for **\$10,100.00**, 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: April 26, 2013

Residential Tenancy Branch

