



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC and FF

Introduction

This hearing was convened on an application made by the landlord on April 29, 2013 seeking 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 April 18, 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 served in person on April 29, 2013, the tenant did not call in to the number provided to enable her 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 September 1, 2010. Rent is \$400 per month and there is no security deposit.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of April 18, 2013 had been served after the tenant had failed to pay the rent for six months in a row beginning with the rent due on November 1, 2012.

In the interim, the tenant remains in the rental unit and has not paid the rent due on May 1, 2013.

The landlord stated that he had delayed taking action for the unpaid rent as he had had some sympathy for the tenant when she was short of funds and that she had been a friend of his nephew.

The landlord requested an Order of Possession and a Monetary Order for the unpaid rent and recovery of the filing fee for his proceeding, but said he wished to reduce the monetary claim by \$100 as gesture of courtesy.

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.

I accept the evidence of the landlord that the tenant 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 tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which, taking into account the three days from deemed service of notice served by posting was May 1, 2013.

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

In the absence of any evidence to the contrary, I further find that the landlord is entitled to a Monetary Order for seven months' unpaid rent and recovery of his filing fee.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

November 2012 rent	\$ 400.00
December 2012 rent	400.00
January 2013 rent	400.00
February 2013 rent	400.00
March 2013 rent	400.00
April 2013 rent	400.00
May 2013 rent - less \$100 deduction for courtesy	300.00
Filing fee	<u>50.00</u>
TOTAL	\$2,750.00

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, the landlords' copy of this decision is accompanied by a Monetary Order for **\$2,750.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: May 15, 2013

Residential Tenancy Branch

