



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD and FF

Introduction

Application was made by the landlord on April 25, 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 April 5, 2013. The landlord also sought a monetary award for unpaid rent, loss or damage under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on April 27, 2013 and received on May 15, 2013, the tenant did not call in to the number provided to enable her participation in the telephone conference call proceeding. 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 December 1, 2010. Rent is \$600 per month and the landlord hold a security deposit of \$300 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of April 5, 2013 had been served when the tenant had not paid rent for February, March and April of 2013.

The landlord stated that the tenant had told her verbally that she had moved in with her boyfriend, but despite her repeated promises to remove her furniture from the rental unit and pay off the rent arrears, the tenant had done neither. Therefore, the landlord served the Notice to End Tenancy of April 5, 2013.

In the interim, the tenant has still not removed her furnishings or paid any of the rent arrears or the rent due on May 1, 2013.

Therefore, the landlord has requested the Order of Possession, a monetary award for the unpaid rent, recovery of the filing fee and authorization to retain the security deposit.

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 and did not make application to dispute it.

Therefore, 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 April 18, 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 later.)

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on May 24, 2013.

I further find that the tenant owes rent for the four months from February to May 2013 inclusive.

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 tenant.

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	\$ 600.00
Rent March 2013	600.00
Rent for April 2013	600.00
Rent for May 2013	600.00
Filing fee	50.00
Sub total	\$2450.00
Less retained security deposit (no interest due)	- 300.00
TOTAL	\$2,150.00

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 at 1 p.m. on May 24, 2013.

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 **\$2,150.00** 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 23, 2013

Residential Tenancy Branch