



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cyclone Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR and FF

Introduction

This hearing was convened on an application made by the landlord on May 1, 2013, 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 2, 2013. The landlord also sought a Monetary Order for the unpaid rent and recovery the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on May 13, 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 Order as requested.

Background and Evidence

This tenancy began on May 1, 2012. Rent is \$735 per month and the landlord holds a security deposit of \$367.50 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenant had failed to pay the \$725 rent due on April 1, 2013.

In the interim, the tenant remains in the rental unit, the April rent remains unpaid and the tenant has paid no rent for May or June 2013.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent for April, May and June of 2013, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

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.

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) & (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 April 15, 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 effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for April and May 2013. As the hearing was held in early June 2013, it remains possible that the landlord will be able to get a new tenant for June 15, 2013. Therefore, I award one-half of the unpaid rent for June 2013.

I further find that the landlord is entitled to recover the filing fee for this proceeding from the tenant. As permitted under section 72 of the *Act*, I hereby authorize the landlord to retain the tenant's security deposit in set off against the balance owed, calculated as follows:

April 2013 rent	\$ 735.00
May 2013 rent	735.00
One half of June rent	367.50
Filing fee	<u>50.00</u>
Subtotal	\$1,887.50
Less retained security deposit (No interest due)	<u>- 367.50</u>
TOTAL	\$1,520.00

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 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 for **\$1,520.00**, 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: June 04, 2013

Residential Tenancy Branch

