



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bristol Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD and FF

Introduction

This hearing was convened on an application made by the landlord on May 13, 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 May 2, 2013. The landlord also sought a Monetary Order for the unpaid rent, late fees 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 in person on May 15, 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.

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 December 1, 2012 under a fixed term rental agreement set to end on November 30, 2013. Rent is \$850 per month and the landlord holds a security deposit of \$425 paid on November 30, 2013. The rental agreement provides for a late fee of \$25 if rent is not paid on the due date.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenants had a rent shortfall of \$150 from April 2013 and had failed to pay the \$850 rent due on May 1, 2013.

In the interim, the tenant remains in the rental unit, the April shortfall remains unpaid and the tenants paid only \$400 of the May rent on May 17, 2013. The landlord issued a receipt for that payment with the notation, "for use and occupancy only," indicating that acceptance of the partial payment did not reinstate the tenancy.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent for April, May and June of 2013 with late fees for May and June 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 tenants did not pay the full 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 tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was May 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 find that the landlord is entitled to a Monetary Order for the unpaid rent and late fees for April, May and June 2013 plus late fees.

I further find that the landlord is entitled to recover the filing fee for this proceeding from the tenants and, 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 shortfall	\$ 150.00
May 2013 rent shortfall	450.00
May 2013 late fee	25.00
June 2013 rent	850.00
June 2013 late fee	25.00
Filing fee	<u>50.00</u>
Subtotal	\$1,550.00
Less retained security deposit (No interest due)	<u>- 425.00</u>
TOTAL	\$1,125.00

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 accompanied by a Monetary Order for **\$1,125.00**, 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: June 07, 2013

Residential Tenancy Branch