



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR and FF

Introduction

This hearing was convened on an application made by the landlords on June 28, 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 June 14, 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 sent by registered mail on June 28, 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 July 1, 2011. Rent is \$650 per month as stated in the rental agreement, but the landlords stated that by verbal agreement, they had accepted \$600 per month for the period from October to March inclusive to assist the tenant with heating costs. Rent reverted to \$650 for the spring/summer period.

The landlords had held a security deposit of \$325 but it was applied to rent when the rent due date was adjusted from the first to the 15th day of the month in May 2013 when the tenant paid no rent. The rent due date was subsequently returned to the first day of the month.

During the hearing, the landlords gave evidence the Notice to End Tenancy of June 14, 2013 had been served after the tenant had failed to pay the \$375 dollars of the rent due on June 1, 2013, a figure which included a \$50 shortfall from April 2013.

The landlords also submitted a copy of a 10-day Notice to End Tenancy dated May 25, 2013 for \$650 that was to be paid on May 15, 2013 plus the \$50 from April when the tenant paid only \$600 while the rent had been scheduled to return to \$650.

In the interim, the tenant remains in the rental unit, the May 2013 shortfall remains unpaid, the tenant did pay the full \$650 rent for June 2013, but paid no rent for July 2013.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent and recovery of the filing fee for his proceeding.

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 was June 24, 2013.

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 and recovery of the filing fee for this proceeding. Thus I find that the tenant owes to the landlord, an amount calculated as follows:

April 2013 rent short fall	\$ 50.00
May rent shortfall (after security deposit applied by tenant)	325.00
Rent for July 2013	650.00
Filing fee	50.00
TOTAL	\$1,075.00

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 tenant.

In addition, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,075.00**, 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: July 30, 2013

Residential Tenancy Branch

