



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 landlord on June 26, 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 17, 2013. The landlord also sought a Monetary Order for the unpaid rent, late fee 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 his participation in the telephone conference call hearing. Therefore, it proceeded in his 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 September 7, 2006. Rent is \$1,925 per month and the landlord holds a security deposit of \$800 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenant had failed to pay the \$1,925 rent due on June 1, 2013.

In the interim, the tenant remains in the rental unit; however, the tenant did pay the landlord \$2,000 on July 15, 2013 which covered the June 2013 rent, the late fee and the filing fee for this proceeding.

However, the July rent remains outstanding.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent for July 2013 to be enforced at his discretion.

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 30, 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 July 2013 as requested.

In addition, as authorized under section 72 of the *Act*, I hereby order that the landlord may retain the security deposit plus interest in set off against the outstanding rent.

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

Rent for July 2013	\$1,925.00
Less retained security deposit	- 800..00
Less interest (Sept. 7, 2006 to date)	- 24.46
TOTAL	\$1,100.54

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 **\$1,100.54**, 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

