



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD and FF

Introduction

This hearing was convened on the landlords' application of July 15, 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 July 2, 2013. The landlord also sought a Monetary Order for the unpaid rent and 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 served in person on July 15, 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.

At the commencement of the hearing, the landlord advised that the tenant had vacated the rental unit on July 31, 2013 and that the Order of Possession was no longer required.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested.

Background and Evidence

This tenancy began on July 1, 2013 under a one-year fixed term rental agreement signed on June 26, 2013. Rent was set at \$775 per month and a security deposit of \$387.50 was paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been posted on the tenant's door on July 2, 2013 when the tenant had failed to pay the first month's rent due on July 1, 2013. The landlord stated that when the rent remained unpaid on July 15, 2013, she filed the present application.

The landlord stated that the rent remained unpaid on July 31, 2013 when the tenant vacated the rental unit without providing a forwarding address.

Therefore, the landlord requested a Monetary Order for the unpaid rent, recovery of the filing fee for his 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 was July 15, 2013 taking into account the three days for deemed service of notice served by posting.

Section 67 of the *Act* empowers the director's delegate to determine an amount owed by one party of a rental agreement to the other and to order payment of that amount.

In the present matter, I find that the landlord is entitled to a monetary award for the unpaid rent and filing fee for this proceeding and, as permitted under section 72 of the *Act*, I hereby order that the landlords retain the security deposit in set off. The Monetary Order is calculated as follows:

Rent for July 2013	\$775.00
Filing fee	<u>50.00</u>
Subtotal	\$825.00
Less retained security deposit (No interest due)	<u>- 387.50</u>
TOTAL	\$437.50

Conclusion

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order for **\$437.50**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlords remain at liberty to make a further application for any damages ascertained at the conclusion of the tenancy.

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: August 15, 2013

Residential Tenancy Branch

