



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MND, MNSD and FF
Tenants: CNR

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of August 1, 2013, the landlord sought an Order of Possession in support of a 10-day Notice to End Tenancy for unpaid rent served in person on July 26, 2013. The landlord also sought a monetary award for unpaid rent for one year, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance owed. A request for compensation for damage to the rental unit is premature as the tenant has not yet moved.

By application of July 30, 2013, the tenant sought to have the Notice to End Tenancy set aside and more time to make application which was moot as her application was made within five days of service as required.

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 or whether the notice to end tenancy should be set aside.

Background and Evidence

This tenancy began on September 1, 2010. Rent is \$1,200 per month and the landlord holds a security deposit of \$600 paid at the beginning of the tenancy.

As a matter of note, this tenancy was the subject of a similar hearing on August 17, 2011 in which the landlord's application was dismissed when he did not appear.

When asked why he had waited so long to act on the present application, he stated that he had been travelling extensively and simply had not had an opportunity until recently to focus on addressing the tenancy. He stated that he had approached one or two property managers, but they were not interested in taking the account in its present state.

The landlord stated that his loss is much greater, but given the unlikely hood of collecting on a larger judgement, he was claiming only one year of unpaid rent. The landlord submitted a comprehensive collect of his bank statements show no deposits in the amount of the \$1,200 rent.

I offered the tenant the opportunity to point to a single piece of evidence that would proved she had paid any of the rent claimed by the landlord. The tenant could point to no such proof before me and merely surmised that the money was going to his bank or another bank.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

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. The 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 rent within five days of receiving the notice though she did make application to contest it.

Evaluating the evidence of the parties, I find the landlord to be the more credible. While it is practically impossible to prove the negative, that the tenant did not pay the rent as claimed, the landlord made reasonable effort by submitting a copious package of bank statements.

I would have been much easier for the tenant to have provided deposit slips, or cancelled cheques, or bank statements to prove she had paid any of the rent claimed by the landlord.

Therefore, I find that the tenant has paid no rent for at least a full year and did not make payment within five days of service of the notice..

Accordingly, under section 46(5) 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 August 5, 2013.

I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

I further find that the landlord is entitled to a monetary award for all of the unpaid rent.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant.

In addition, as authorized under section 72 of the *Act*, I find that the landlord may retain the security deposit in set off against the unpaid rent.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Rent for 12 months from July 1, 2012 to July 2013.@ \$1,200	\$14,400.00
Filing fee	100.00
Sub total	\$14,500.00
Less retained security deposit (no interest due)	- 600.00
TOTAL	\$13,900.00

Conclusion

The tenant's application is dismissed without leave to reapply.

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, enforceable through the Provincial Court of British Columbia for **\$13,900.00** 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: September 10, 2013

Residential Tenancy Branch

