



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD and FF

Introduction

This hearing was convened on an application made by the landlord on July 23, 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 5, 2013. The landlord also sought a monetary award for the unpaid rent, loss or damage under the legislation or rental agreement, 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 sent by registered mail to each of them individually on July 27, 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 April 1, 2013 under a one-year fixed term tenancy agreement. Rent is \$900.00 and the landlord holds a security deposit of \$450 paid on at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served on July 5, 2013 after the tenants had failed to pay the \$300 of the rent due on June 1, 2013 and the \$900 rent due on July 1, 2013.

She stated that, in the interim, the tenants had made a payment of \$1,000 on July 18, 2013 toward the arrears but did not pay the rent due on August 1, 2013 until August 18, 2013 when they paid \$670, leaving a current outstanding balance of \$430.

The landlord indicated that she would be willing to continue the tenancy if the tenants promptly paid the \$430 arrears and the \$900 rent due on September 1, 2013. However, she requested the Order of Possession and Monetary Order in the event the payments were not made.

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 make application to contest the notice and did not pay any of the rent within five days of receiving the notice. Despite the partial payments, they have not as yet brought the account up to date.

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 July 18, 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 tenants.

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 and, as permitted under section 72 of the *Act*, authorization to retain the security deposit in set off, calculated as follows:

Amounts owed to landlord		
Reent short fall for June 2013 900	\$ 300.00	
Rent for July 2013	900.00	
Rent for August 2013	900.00	
Filing fee	<u>50.00</u>	
Sub total	\$2,150.00	\$2,150.00
Tenants' credits		
Payment made July 18, 2013	\$1,000.00	
Payment made August 18, 2013	670.00	
Retained security deposit	<u>450.00</u>	
Subtotal	\$2,120.00	<u>- 2,120.00</u>
TOTAL	\$3,097.50	\$ 30.00

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 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 **\$30.00**, 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: August 30, 2013

Residential Tenancy Branch