



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mndc. mnr, opr, ff

Introduction

The landlord has applied for dispute resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession and a Monetary Order for unpaid rent, and NSF service charge, and recovery of their filing fee.

Two representatives for the landlord attended the hearing, and the male tenant attended. I accept that female tenant was also properly served by registered mail with the landlord's the Application for Dispute resolution hearing package. There is also no dispute that the 10 Day Notice to End Tenancy, dated January 6, 2017 was posted on the tenant's door on January 6, 2017. The female tenant who has since moved out is deemed to have received this notice pursuant to section 90 of the Residential Tenancy Act/. The male tenant acknowledged receipt on or about January 15, 2017, when he returned to the premises after being away for work.

Issues to Be Decided

- Is the 10 day Notice to End Tenancy effective to end this tenancy and entitle the landlord to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent money due and payable by the tenant to the landlord?
- Is the landlord entitled to recover an NSF charge?
- Is the landlord entitled to recover their filing fee?

Background and Evidence

This tenancy began October 1, 2016. Rent is due on the 1st day of each month in the amount of \$990.00, plus a further \$20.00 for parking. A security deposit of \$495.00 and pet damage deposit of \$495.00 were paid September 28, 2016. The landlord served the tenants with a 10 Day Notice to End Tenancy on January 6, 2017, after the rent cheque for January bounced. The tenants did not apply for dispute resolution to dispute the Notice to End Tenancy. On February 3, 2017, the male tenant and landlord agreed that the \$495.00 pet damage deposit would be applied against the rental arrears. On

February 7, 2017, the tenant paid further rent of \$770.00. After deduction of the NSF/late payment fee, this leaves a balance owing for February rent of \$805.00.

Analysis

Section 26(1) of the Residential Tenancy Act, and the terms of the tenancy agreement required the rent to be as and when due. This did not occurred in January, and the landlord was entitled to issue the 10 day Notice. In the absence of the required payment of the full rental arrears for January, or of a dispute of the notice within the 5 day period set out in the Notice, the tenants were conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act. That effective date of the end of the tenancy has been extended in to February, by virtue of the landlord's acceptance in February of the arrears for January along with a portion of the rent for February. The landlord now requests that an Order of Possession be made effective February 28, 2017. The tenant explained that he is working hard to pay off the arrears and get caught up with his rent. I accept his submissions as being truthful, but the Residential Tenancy Act provides me no discretion to override the conclusive deeming provisions associated with a Notice to End Tenancy. The requested Order of Possession is therefore appropriate, and is granted.

The landlord is awarded \$805.00, representing the balance of rent owing for February, plus \$100.00 representing the recovery of his filing fee.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective February 28, 2017. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is issued a Monetary Order of \$905.00, representing the awarded rental arrears and the filing fee.

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: February 15, 2017

Residential Tenancy Branch