



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR MNSD OPR FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served September 3, 2008. The landlord also sought a Monetary Order for the unpaid rent, late fees and filing fee, and authorization to retain the security deposit in set off against the balance owed.

Despite being served with the Notice of Hearing, 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 the effective date, and whether a Monetary Order is due, the amount, and if the filing fee, late fees and off setting security deposit should be included.

Background and Evidence

This tenancy began February 1, 2001. Rent is \$650 per month and the landlord holds a security deposit of \$277.50 paid on January 13, 2001.

During the hearing, the landlord gave evidence that the notice to end tenancy had been served when the tenant failed to pay the rent for September 2008. While the tenant did make the payment on October 3, 2008, it was beyond the five days within which it would have extinguished the notice, and the landlord issued a receipt for “use and occupancy only,” indicating that the notice remained in effect.

At the time of the hearing, the tenant had not paid the October. Therefore, the landlord seeks a Monetary Order for that amount plus late fees of \$25 each for September and October.

Analysis

Section 46 of the *Act* which deals with notice to end tenancy for unpaid rent provides that a tenant may pay the overdue rent or make application for dispute resolution within five days of receiving the notice. If the tenant does neither, they are presumed to have accepted that the tenancy ends on the date stated on the notice. In this matter, the tenant did not pay the rent within five days and he has not made application to dispute the notice.

Therefore, the landlord requested, and I find he 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, late fees and filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

October rent	\$650.00
September late fee	25.00
October late fee	25.00
Filing fee	<u>50.00</u>
Sub total	\$750.00
Less retained security deposit	- 277.50
Less interest (January 13, 2001 to date)	<u>- 17.42</u>
TOTAL	\$455.08

Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective two days from service of it on the tenant, and a Monetary Order for \$455.08 for service on the tenant.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia.

Dated: October 30, 2008