

Decision

Dispute Codes:

OPR

MNR

MNSD

FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This Dispute Resolution Hearing was convened to deal with an Application by the Landlord for an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 25, 2008, for a monetary order for unpaid rent, to keep the security deposit; and to recover the filing fee for the cost of this application.

The evidence on the case file was reviewed prior to the Hearing and this Application proceeded on its merits.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the Landlord is entitled to an Order of Possession under section 55 of the Act, based on the 10 day Notice to End Tenancy;
- Whether the Landlord is entitled to a monetary order under section 67 of the Act; and

- Whether the Landlord is entitled to recover the filing fee of \$50.00 from the Tenant.

Background and Evidence

The Landlord testified that he served the Tenant with the Notice to End Tenancy dated November 25, 2008 by sending it via registered mail to the Tenant's address on November 26, 2008. The Landlord provided a tracking number for the registered mail, along with a copy of the Canada Post website tracking search.

The Landlord testified that he served the Tenant with the Application for Dispute Resolution filed on December 15, 2008, on December 18, 2008, by sending the documents via registered mail to the rental unit. He provided a tracking number for the registered mail.

The Landlord testified that the Tenant paid a security deposit on June 11, 2007, in the amount of \$777.50. The monthly rent is \$1,600.00 and is due on the first of each month. The Landlord submitted that the Tenant has failed to pay rent for the months of October, November, and December, 2008, and January, 2009. Furthermore, the Tenant is in arrears of \$50.00 from September, 2008, because he did not pay the rent increase of \$50.00 in September. The Landlord submits that the total amount owing to date is \$6,450.00.

Analysis

The Canada Post website tracking search indicates that an attempted delivery of the Notice to End Tenancy was made on November 28, 2008. A notice card was left indicating where the documents could be picked up. Pursuant to section 90 of the Act, service of a document if given or served by mail is deemed to be received on the 5th day after it is mailed. I find that the Tenant was served with the Notice to End Tenancy on December 1, 2008. The effective date for the end of the tenancy was December 11, 2008. The Tenant did not apply to dispute the Notice and is therefore conclusively

presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of December 11, 2008. I therefore find that the Landlord is entitled to an Order of Possession.

Likewise, the Tenant was deemed to have been served with the Application for Dispute Resolution on December 23, 2008 and, although duly served, did not attend the Hearing.

The Landlord was successful in today's application. Therefore, the Landlord is entitled to recover his filing fee in the amount of \$50.00.

I find that the the Landlord has established a total monetary claim of \$6,500.00, calculated as follows:

Rent arrears for September, 2008 (Tenant failed to pay rent increase)	\$50.00
Rent arrears for October, 2008	\$1,600.00
Rent arrears for November, 2008	\$1,600.00
Rent arrears for December, 2008	\$1,600.00
Loss of rent for January, 2009	\$1,600.00
Recovery of filing fee for this application	<u>\$50.00</u>
TOTAL	\$6,500.00

I order that the Landlord retain the security deposit of \$775.00, together with accrued interest in the amount of \$18.23 in partial satisfaction of the claim leaving a balance due to the Landlord of \$5,706.77.

Conclusion

Under section 55 of the Act, and based on the above facts, the Landlord is entitled to an Order of Possession and I hereby issue the order. The Tenant will have two days from

the date of service of the order to vacate the premises. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord a monetary order under section 67 of the *Act* for \$5,706.77. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

January 15, 2009
