



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the landlord is entitled to an Order of Possession and if so, the effective date of the Order of Possession.
2. Whether the landlord is entitled to a Monetary Order for unpaid rent and late fee, and if so, the amount of the Monetary Order.
3. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the parties and evidence before me, I make the following relevant findings concerning the tenancy. The co-tenancy began in May 2007. The tenants are required to pay rent of \$315.00 on the 1st day of every month. The tenants did not pay a security deposit. The tenant's December 1, 2008 rent cheque was returned for insufficient funds. Previous rent payments have also been returned; however, the tenants have provided rent at a later date.

The parties were in dispute with respect to service of a *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* (the Notice) upon the tenant on December 10, 2008. The tenant claimed to not have a copy of the Notice in his records and could not recall being served with any paperwork until he was served with Notice of this hearing. The manager testified very clearly that he served the tenant with the Notice on December 10, 2008 at approximately noon just as the tenant was getting in his car to head in to town. The manager explained that he also talked to the tenant about the tenant's obligation to pay the outstanding rent within five days in order to cancel the Notice. I preferred the manager's testimony over the recollection of the tenant and I accepted that the Notice served upon the tenant as described by the manager. The Notice indicates that \$315.00 was outstanding and the tenancy would end on December 20, 2008.

The landlord is seeking a Monetary Order for unpaid rent for the months of December 2008 and January 2009 as well as two late fees of \$25.00 each and the filing fee for a total of \$730.00. The landlord provided a copy of the tenancy agreement and addendum to the tenancy agreement signed by the tenant. The addendum provides for late fees and NSF charges; however, the amounts provided in the addendum exceed the allowable amounts permitted by the Residential Tenancy Regulations.

The tenant acknowledged that he owes the landlord \$730.00 and agreed to pay it on January 27, 2009. The tenant stated that he intends to move to a new home in April 2009 and is trying to sell the manufactured home situated on the rental site. The tenant claims that he tried to pay the outstanding rent to the manager after December 22, 2008 but that the manager would not accept it. The manager stated that the tenant approached the manager later than December 22, 2008 and that he told the tenant that he had to talk to the landlord before accepting payment.

Despite the tenant's assurance he would pay the landlord \$730.00, the landlord requested a Monetary Order be provided to ensure the tenant pays the outstanding rent. The landlord was willing to permit the tenant to occupy the rental site for an additional two weeks and requested an Order of Possession effective February 3, 2009.

The landlord was also requesting that I order the tenant to comply with the manufactured home park pet rules.

Analysis

Where a tenant is served with a Notice for unpaid rent, the tenant has five days to either pay the outstanding rent or dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date stated on the Notice. In this case, the tenants did not dispute the Notice or pay the outstanding rent within five days. I find the tenancy ended on December 20, 2008 and since the tenants continue to occupy at the rental site, the landlord is entitled to an Order of Possession. I provide an Order of Possession for the landlord with this decision effective February 3, 2009. The landlord must serve the Order of Possession upon the tenants. If the tenants do not vacate the rental site, the landlord may file the Order of Possession with the Supreme Court of British Columbia to enforce as an Order of that court.

Upon considering the all the testimony and the documentary evidence before me, I am satisfied that the landlord is entitled to receive a Monetary Order for \$730.00. This award includes the filing fee paid for this application and two late fees of \$25.00 each, as permitted by the Residential Tenancy Regulation. The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

As the tenancy has ended and the landlord was successful in obtaining an Order of Possession for unpaid rent, I do not provide an Order for the tenant to comply with the pet rules.

Conclusion

The landlord is provided with an Order of Possession effective February 3, 2009. The landlord is provided with a Monetary Order in the total amount of \$730.00.

January 21, 2009

Date of Decision

Dispute Resolution Officer