

Decision

Dispute Codes: OPR MNR 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.

I reviewed the evidence on the case file prior to the Hearing. The Landlord gave affirmed testimony 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:

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord 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 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 28, 2008, by posting a copy of the Notice on the Tenant’s door and by leaving a copy of the Notice in the Tenant’s locked mail box on November 28, 2008.

The Landlord testified that he attempted to serve the Tenant with today’s Application and the Notice of Hearing package by registered mail on January 8, 2009. The Landlord testified that the registered mail was refused by the Tenant. The Landlord testified that he personally served the Tenant with today’s Application and the Notice of Hearing package on January 13, 2009 at 4:20 p.m. at the Tenant’s residence.

The Landlord testified that the monthly rent for the rental unit is \$1,500.00, and rent is due on the 15th day of the month. The Landlord testified that the Tenant's cheque in the amount of \$750.00 for the security deposit was returned to the Landlord "not sufficient funds". The Landlord stated that the Tenant has not paid rent for the months of October, 2008, November, 2008, December, 2008 and January, 2009, and is still living in the rental unit.

The Landlord asked for an Order of Possession and a monetary order in the amount of \$6,050.00, as follows:

Unpaid rent	\$6,000.00
Recovery of the filing fee for today's application:	<u>\$ 50.00</u>
TOTAL	\$6,050.00
	=====

Analysis

On the affirmed testimony of the Landlord, I am satisfied that the Tenant was duly served with the Notice to End Tenancy and the Application for Dispute Resolution.

Pursuant to Section 90 of the Act, the Tenant was deemed to have received the Notice to End Tenancy on December 1, 2008, three days after the Landlord left a copy of the Notice in the Tenant's mail box, or posted it on her door. The effective end of tenancy is therefore December 11, 2008. The Tenant did not pay the amount owing to the Landlord and did not dispute the Notice within 5 days of receiving the Notice. Therefore under Section 46 of the Act, the Tenant is presumed to have accepted that the Tenancy ended on December 11, 2008. The Landlord is entitled to an immediate order of possession and I make that order.

With respect to the Landlord's application for a monetary order, I find that the Landlord is entitled to a monetary order for loss of rent for the months of October, 2008, November, 2008, December, 2008 and January, 2009, in the amount of \$6,000.00.

The Landlord has been successful in his application and is entitled to recover the filing fee from the Tenant.

I find that the the Landlord has established a total monetary claim of \$6,050.00 calculated as follows:

Loss of rent	\$6,000.00
Recovery of filing fee for this application	<u>\$50.00</u>
TOTAL	\$6,050.00

Conclusion

I grant the Landlord a monetary order under section 67 of the Act for \$6,050.00. 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.

Under section 55 of the Act, and based on the above facts I find that the Landlord is entitled to an Order of Possession and I hereby issue the order effective two days from service of the order. This order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

February 4, 2009
