

Decision

Dispute Codes: OPR MNR MNDC 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.

I reviewed the evidence on the case file prior to the Hearing. The Landlords’ agent 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, and compensation for damage or loss?
- Is the Landlord entitled to keep all or part of the security deposit?
- 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 December 9, 2008, by posting the Notice on the Tenant’s door on December 15, 2008.

The Landlord testified that he served the Tenant with the Application and Notice of Hearing by personal service on the Tenant, on December 31, 2008.

The monthly rent for the rental unit is \$600.00. The Landlord testified that the Tenant paid the Landlord \$500.00 towards December's rent on January 15, 2009 and a further \$200.00 a week later. The Landlord testified that he accepted the \$500.00 but that he told the Tenant he was not reinstating the tenancy. The Landlord testified that he told the Tenant that if the Tenant paid him the full amount owing for January and February rent before the date of the Hearing, he would reinstate the tenancy. The Landlord stated that the Tenant has not paid any further sum of money and is still in the rental unit.

The Landlord asked for an Order of Possession and a monetary order in the amount of \$1,100.00, as follows:

Damages for loss of rent for January 2009	\$500.00
Damages for loss of rent for February 2009	<u>\$600.00</u>
TOTAL	\$1,100.00
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The Landlord testified that the Tenant paid a security deposit in the amount of \$300.00 on May 1, 2008. The Landlord asked for an order that he keep all of the security deposit and recover the filing fee of \$50.00 from the Tenant.

Analysis

Pursuant to Section 90 of the Act, the Tenant was deemed to have received the Notice to End Tenancy three days after the Landlord posted it on his door, December 18, 2008. The effective end of tenancy was December 28, 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 28, 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 damages for loss of rent for the month of January, 2009, in the amount of \$500.00. It is premature to allow the Landlord's loss for all of February, 2009 rent, as it is still early in the month and the Landlord may be able to re-rent the suite prior to February 28, 2009. I find that the Landlord is entitled to loss of rent to today's date for the month of February and give the Landlord leave to re-apply for further loss of February rent.

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 \$ calculated as follows:

Loss of rent for January, 2009	\$500.00
Loss of rent to February 3, 2009 (3 days x \$19.726)	\$59.18
(\$600.00 x 12 months / 365 days = \$19.726)	
Recovery of filing fee for this application	<u>\$50.00</u>
TOTAL	\$609.18

I order that the Landlord retain the security deposit of \$300.00, together with accrued interest in the amount of \$3.01 in partial satisfaction of the claim leaving a balance due to the Landlord of \$306.17.

Conclusion

I grant the Landlord leave to re-apply for damages for loss of rent incurred after February 3, 2009.

I grant the Landlord a monetary order under section 67 of the Act for \$306.17. 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.

February 3, 2009
