



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MNR, MNSD and 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 by posting of January 2, 2009. The landlord also sought a Monetary Order for the unpaid rent, late fee and filing fee for this proceeding and authorization to retain the security deposit in set off.

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 should be included.

Background and Evidence

This tenancy began March 1, 2004. Rent is \$881 per month and the landlord holds a security deposit of \$415 paid on February 16, 2004.

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 January 2009. In the interim, the tenant made partial payment of \$403 but did not pay the balance or the January rent or any of the February rent. As stated in the rental agreement, the landlord also claims a \$20 late fee for each of the two months.

The tenant agreed that these claims were correct and stated that she believed she would be able to pay the arrears in a day or two and pay the March rent by March 6, 2009 and hoped that the landlord would continue the tenancy. That remains a matter of negotiation between the parties.

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 has not paid the rent and has not made application to dispute the notice.

Therefore, the landlord requested, and I find she 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:

January rent shortfall	\$478.00
January late fee	20.00
February rent	881.00
February late fee	20.00
Filing fee	50.00
Sub total	\$1,449.00
Less retained security deposit	- 415.00
Less interest (February 16, 2004 to date)	- 14.69
TOTAL	\$1,019.31

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 \$1,019.31 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.

February 26, 2009.

Dispute Resolution Officer