

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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.

The Landlord’s agent gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Landlords’ application for an Order of Possession and a Monetary Order for unpaid rent, to retain the security deposit and recover the filing fee from the Tenant.

- (1) Are the Landlords entitled to an Order of Possession?
- (2) Are the Landlords entitled to a monetary order?

Background and Evidence

Landlords’ evidence

The Landlord’s agent testified that the Tenants were served with the Notice to End Tenancy by posting the Notice to the door of the Tenant’s residence on January 22, 2009.

The Landlord’s agent testified that she mailed both Tenants a copy of the Application for Dispute Resolution and hearing package on February 7, 2009 by registered mail to the Tenants’ residence. The Landlord’s agent testified that both packages were returned to her on March 4, 2009, unclaimed.

The Landlord's agent testified that:

- There is a verbal tenancy agreement in place.
- The tenancy started on September 1, 2008.
- The monthly rent was \$750.00.
- The Tenants are in arrears of rent for November and December, 2008, and January and February, 2009 rent. The Tenants have not paid any rent for the month of March, 2009.
- The Tenants paid a security deposit in the amount of \$375.00 on September 1, 2008.
- The Tenants are still residing in the rental unit.

The Landlord's agent asked for a monetary order to include loss of rent for the month of March, 2008.

Analysis

I accept the Landlord's agent's testimony that the Tenants have been properly served with the Notice to End Tenancy. Service by way of posting a document on a tenant's door is deemed to be served three days after posting the document. In this case, service was effected on January 25, 2009, and the effective end to the tenancy is therefore February 4, 2009.

The Tenants did not pay the rental arrears or dispute the Notice to End Tenancy and are conclusively presumed to have accepted that the tenancy ended effective February 4, 2009.

I accept the Landlord's agent's testimony that she mailed the Tenants the Notice of Hearing Package and Application for Dispute Resolution on February 7, 2009, by registered mail. Service by mail is deemed to be effected 5 days after mailing the documents. In spite of being served with the documents, the Tenants did not appear at today's Hearing and the Hearing proceeded in their absence.

The Landlords are entitled to an Order of Possession and I make that order.

The Landlords have established their monetary claim for rent arrears and loss of rent for November, 2008, December, 2008, January, 2009 and February, 2009. The Landlords have established their monetary claim for damages for loss of March, 2009, rent

Pursuant to Section 72 of the Act, the Landlords may apply the security deposit, together with any accrued interest thereon, towards their monetary order.

The Landlords have been successful in their application and are entitled to recover the filing fee in the amount of \$50.00 from the Tenants.

I therefore make a monetary order in favour of the Landlords the amount of \$3,423.12, calculated as follows:

Unpaid rent:	\$3,000.00
Loss of Rent for March, 2009:	\$750.00
Recovery of filing fee	\$50.00
Less security deposit and interest of \$1.88	<u><\$376.88></u>
TOTAL	\$3,423.12
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Conclusion

I grant the Landlords a monetary order for \$3,423.12 against the Tenants. This order must be served on the Tenants 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 Landlords are 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 Tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

March 23, 2009
