

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 gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Landlord’s 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) Is the Landlord entitled to an Order of Possession?
- (2) Is the Landlord entitled to a monetary order?

Background and Evidence

Landlord’s evidence

The Landlord testified that he personally served the Tenant with the Notice to End Tenancy at the Tenant’s residence on February 3, 2009.

The Landlord testified that he personally served the Tenant with a copy of the Application for Dispute Resolution and hearing package on February 13, 2009 at the Tenant’s residence.

The Landlord testified that:

- The Tenant was in arrears of \$400.00 for the month of January, 2009 and \$650.00 for the month of March, 2009.
- The Tenant paid a security deposit of \$300.00 to the Landlord on February 1, 2005.
- The Tenant paid the arrears of \$1,050.00 to the Landlord on March 27, 2009.
- The Landlord accepted the \$1,050.00 from the Tenant, but told the Tenant that it was for use and occupancy only. The Landlord did not reinstate the tenancy. The Landlord testified that the Tenant understood that the tenancy was not being reinstated. The Landlord testified that he advised the Tenant that he would be attending today's hearing.
- The Tenant is still residing in the rental unit. The Landlord asked for an order of possession and to recover the filing fee from the Tenant for the cost of his application.

Analysis

I accept the Landlord's testimony that the Tenant was personally served with the Notice to End Tenancy on February 3, 2009. The Tenant did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of receipt of the Notice to End Tenancy and is therefore conclusively presumed to have accepted that the tenancy ended effective February 13, 2009.

I accept the Landlord's testimony that he personally served the Tenant with the Notice of Hearing Package and Application for Dispute Resolution on February 13, 2009. In spite of being served with the documents, the Tenants did not appear at today's Hearing and the Hearing proceeded in his absence.

I accept the Landlord's evidence that he advised the Tenant that he was not reinstating the tenancy when he accepted the \$1,050.00 on March 25, 2009, and that the Landlord accepted the money for use and occupancy only.

The Landlord is entitled to an Order of Possession and I make that order.

The Landlord has been successful in his application for an Order of Possession and is entitled to recovery of the cost of the filing fee. Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct \$50.00 from the security deposit. I make no order with respect to the residue of the security deposit.

The Tenant has paid the rental arrears to the Landlord and therefore the Landlord's application for a monetary order for unpaid rent for January and March, 2009, is dismissed without leave to reapply.

Conclusion

I have made an order that the Landlord recover the filing fee for the cost of this application from the Tenant. Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct \$50.00 from the security deposit.

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.

March 27, 2009
