



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

2

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.

This is the Landlords’ application under Sections 67, 55 and 72(1) of the Act for a monetary order for unpaid rent, an order of possession and to recover the filing fee from the Tenants for the cost of this application.

Preliminary Matters

This Hearing was originally held by way of Direct Request Proceeding on February 26, 2009. At that hearing, the Dispute Resolution Officer found that the Landlord duly served the Tenant with the Dispute Resolution Direct Request Proceeding documents. The Dispute Resolution Officer found that the Landlord failed to establish that he served the Tenant with the 10 Day Notice to End Tenancy, and ordered that a conference call hearing be held to determine details of service of the Notice to End Tenancy.

The Landlord gave affirmed testimony that he served the Tenant with the 10 Day Notice to End Tenancy at 6:00 p.m. on January 23, 2009, by posting the Notice on the door of the Tenant’s residence. The Landlord provided the name of a person who witnessed the service.

I am satisfied that the Landlord has established service of the 10 Day Notice to End Tenancy upon the Tenant. At the Direct Request Proceeding on February 26, 2009, the Dispute Resolution Officer found that the Landlord duly served the Tenant with the Dispute Resolution Direct Request Proceeding documents. Therefore this Hearing proceeded.

Issues to be decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order for arrears in rent, and damages for loss of rent?

Background and Evidence

The Landlord gave the following affirmed evidence:

- The Tenancy started on November 22, 2008.
- Monthly rent was \$950.00, due on the 22nd of each month.
- The Tenant paid a security deposit in the amount of \$525.00 on November 22, 2008.
- The Tenant is in arrears in the amount of \$490.00 for January 22 to February 21, 2009.
- The Tenant is still in the rental unit and has not paid any rent for the period of February 22 to March 21, 2009.

The Landlord asked for an order of possession and a monetary order for rent arrears.

Analysis

Pursuant to Section 53 of the Act, the Notice is deemed to be changed to reflect the effective date for the end of tenancy as February 5, 2009.

The Tenant did not pay the rent arrears and did not dispute the 10 Day Notice to End Tenancy within 5 days of receipt of the Notice. Therefore under Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended. The Landlord is entitled to an Order of Possession and I make that order.

The Landlord has established a monetary order for rent arrears for the period of January 22 to February 21, 2009, and for loss of rent for the period of February 22 to March 21, 2009.

It is premature to make a determination with respect to loss of rent for the period of March 22 to April 21, 2009. The Landlord is at liberty to re-apply for loss of rent from the Tenant for that time period.

Pursuant to Section 72 (2)(b) of the Act, the Landlord may apply the security deposit, together with any interest accrued thereon, towards the amount the Tenant owes the Landlord.

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

The Landlord has established a monetary order in the amount of \$964.14, calculated as follows:

Rent arrears for January 22 to February 21, 2009	\$490.00
Loss of rent for February 22 to March 21, 2009	\$950.00
Recovery of filing fee	\$50.00
Less security deposit and \$.86 interest	<u><525.86></u>
BALANCE OWING	\$964.14
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Conclusion

I grant the Landlord a monetary order under section 67 of the Act for \$964.14. 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.

March 23, 2009
