



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, O, MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a Monetary Order for unpaid rent, late payment fees, money owed for loss under the act, to keep the security deposit, and recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on March 13, 2009. The landlord provided verbal testimony with the Canada Post Receipt tracking number. The tenant was deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed.

Representatives for the landlord and the tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession under Section 55 of the *Residential Tenancy Act*
- Whether the landlord is entitled to a monetary claim under section 67 of the *Act* for unpaid rent
- Whether the landlord is entitled to a monetary claim for breach of a material term in the tenancy agreement

- Whether the landlord is entitled to recover the filing fee pursuant to section 72(1) of the *Residential Tenancy Act*

Background and Evidence

It is a month to month tenancy which started on June 1, 1999. Rent is \$648.00 per month plus \$10.00 parking. A security deposit of \$250.00 was paid on May 26, 1999.

The landlord stated that evidence was faxed to the Residential Tenancy Branch on March 16, 2009 at 11:57 a.m. The hard copy faxed evidence was not matched to the file prior to the hearing. Both the applicant and respondent were given the opportunity to present evidence via verbal testimony.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the tenant's door on March 2, 2009. The tenant failed to pay the rental arrears by the March 15, 2009 deadline.

The landlord advised that the tenant made a payment on March 21, 2009 of \$225.00 which was applied to February 2009 arrears of \$61.70, \$163.30 towards March 2009 rent, and leaving a balance owing of \$519.70 (\$494.70 balance of March 2009 rent plus \$25.00 March late payment penalty).

The landlord advised that the tenancy agreement was not reinstated when the tenant made the March 21, 2009 payment.

The tenant testified that he is back to work in the construction industry and would pay the \$519.70 arrears in full on March 27, 2009 and would pay April 1, 2009 rent on time.

The landlord agreed to allow the tenant to pay the March 2009 arrears on March 27, 2009 has withdrawn her monetary claim for unpaid rent and for money owed for loss under the *Act*.

The landlord is still seeking a monetary claim to recover the filing fee of \$50.00.

The landlord is requesting an Order of Possession effective March 31, 2009.

Analysis

Order of Possession – I accept that the tenant has been served with notice to end tenancy on March 5, 2009. The tenant did not pay the rent or apply to dispute the Notice to End Tenancy within five days.

The landlord agreed to allow the rental arrears to be paid in full, with the proviso that the tenancy not be reinstated if the tenant fails to pay the arrears in full by March 27, 2009. The landlord has pursued her request for an Order of Possession effective March 31, 2009 which she advised would only be served on the respondent if he fails to pay the arrears in full by March 27, 2009.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. The landlord and tenant have agreed to reinstate the tenancy on March 27, 2009 if the tenant pays the arrears in full, failing payment of the arrears on this date, the tenancy would not be reinstated and, the parties were made aware, that the landlord would then serve the Order of Possession.

Filing fee - \$50.00. I find that the landlord has succeeded in large and should recover the filing fee from the tenant.

Conclusion

The landlord has withdrawn their request for a Monetary Order for unpaid rent or utilities.

The landlord has withdrawn their request for a Monetary Order for money owed or compensation for damage or loss under the *Act*.

The landlord has been granted an Order of Possession that is effective **March 31, 2009**. This order must be served on the tenant, if the tenant fails to pay the rental arrears in full on March 27, 2009. Once served, this Order can be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord is entitled to a Monetary Order, enforceable through the Provincial Court of British Columbia, for recovery from the tenant of the filing fee for this proceeding of \$50.00.

The landlord's copy of this decision is accompanied by an Order of Possession and a Monetary Order, both of which are to be served upon the tenant.

March 25, 2009
Date of Decision

Dispute Resolution Officer