



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 5, 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.

At the commencement of the hearing, the landlord's representative advised that the tenant had informed him by letter that he had been incarcerated and would not be returning to the rental unit. The landlord was then able to find a new tenant who moved in on January 21, 2009. Therefore, he withdrew the request for an Order of Possession.

Despite being served with the Notice of Hearing, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order, the amount, and if the filing fee should be included.

Background and Evidence

This tenancy began September 15, 2008. Rent is \$750 per month and the landlord holds a security deposit of \$375 paid on September 15, 2008.

During the hearing, the landlord gave evidence that the notice to end tenancy had been served when the tenant had failed to pay the rent for January 2009.

As a new tenant had moved in on January 21, 2008, he wished to reduce his monetary claim to the pro-rated 20 days of January plus the \$25 late fee and filing fee and authorization to retain the security deposit in set off. I exercised my discretion under section 64(3)(c) of the Act and amended the application accordingly.

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.

The tenancy having ended, I find that the landlord is entitled to a Monetary Order for the partial rent for January, late fee and filing fee, and authorization to retain the security deposit in set off as follows:

Tenant Owes		
January rent ($\$750/31 = \24.19 per diem x 20 days)	\$483.87	
January late fee	25.00	
Filing fee	<u>50.00</u>	
Sub total	\$558.87	\$558.87
Tenant's credits		
Less retained security deposit	\$(375.00)	
Less interest (Sept. 15, 2008 to date)	<u>(1.66)</u>	
	\$(376.66)	- 376.66
TOTAL		\$181.91

Conclusion

Thus, the landlord's copy of this decision is accompanied by a Monetary Order for \$181.91 for service on the tenant. The Monetary Order is enforceable through the Provincial Court of British Columbia.

March 3, 2009.

Dispute Resolution Officer