

## **Decision**

### **Dispute Codes**

OPR MNR MNSD 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.

I reviewed the evidence on the file prior to the Hearing. The Landlord gave affirmed testimony and the hearing proceeded on its merits.

### **Preliminary Issues**

At the onset of the Hearing, the Landlord testified that the Tenants vacated the rental unit on the 23<sup>rd</sup> or the 24<sup>th</sup> of February, 2009, abandoning some furniture at the rental unit. Therefore the Landlord withdrew his application for an Order of Possession.

### **Background and Evidence**

The Landlord testified that he served the Tenants with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting the Notice through the mail slot at the Tenant’s residence on February 10, 2009 at 6:30 p.m.

The Landlord testified that he mailed the Tenants the Application for Dispute Resolution and Hearing package, by registered mail to the Tenant’s residence on February 21, 2009.

The Landlord stated that he believes the Tenants may have returned to England, and left no forwarding address.

The Landlord testified that the Tenants moved into the rental unit on July 1, 2004. Initially, the tenancy was a one-year lease. At the end of the term, the tenancy

continued on a month-to-month basis. Rent was \$2,857.00 per month, due on the first of the month. The Tenants paid a security deposit in the amount of \$1,300.00 and a pet deposit in the amount of \$200.00 to the Landlord on June 15, 2004. The Landlord provided a copy of the tenancy agreement into evidence.

The Landlord applied for a monetary order in the amount of \$8,756.00, as follows:

Rent arrears for February, 2009	\$2,857.00
NSF fee for returned February rent cheque	\$45.00
Loss of rent for March, 2009	\$2,857.00
Late fee for March rent	\$20.00
Loss of rent for April, 2009	\$2,857.00
Late fee for April rent	\$20.00
Recovery of the filing fee	<u>\$100.00</u>
TOTAL:	\$8,756.00

The Landlord also applied to retain the security deposits in the amount of \$1,500.00.

The Landlord testified that he has attempted to mitigate his loss of rent by: advertising daily on Craigs List, the Vancouver Sun and the Province; reducing the rent from \$2,857.00 to \$2,600.00 per month on March 1, 2009; installing new carpets and drapes in the rental unit; repainting the rental unit; and offering a bonus of ½ month free rent in mid-March. The Landlord testified that the rental unit remains vacant.

### **Analysis**

I accept the Landlord's testimony that the Tenants were served with the Notice to End Tenancy on February 10, 2009. Section 90 of the Act deems service in such

a manner to be effected three days after posting the documents through the mail slot. The effective end of tenancy was therefore February 23, 2009.

The Tenants did not pay the rent due, or dispute the Notice within 5 days of deemed service of the Notice. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on that day. The Tenants vacated the rental unit on February 23 or 24, 2009.

I accept the Landlord's testimony that he served the Tenants with his Application and Notice of Hearing package by registered mail. Pursuant to Section 90 of the Act, service in this manner is deemed to be effected five days after mailing the documents. The Tenants did not attend the Hearing, though duly served, and the Hearing continued in their absence.

The Landlord is entitled to a monetary order for February rent arrears in the amount of \$2,857.00. With respect to the Landlord's claim for \$45.00 NSF fees, paragraph 3 of the Tenancy Agreement allows for \$25.00 only. I allow the amount of \$25.00 for NSF fees.

I find that the Landlord has attempted to mitigate his loss. I grant the Landlord's application for the month of March, 2009.

This was not a term lease, but a month-to-month tenancy. While I appreciate that these are tough economic times and tenants for this quality of accommodation may be scarce, it is not the Tenants' responsibility to bear the brunt of the Landlord's loss of rental income. In a month-to-month tenancy, a tenant need give only one month's notice. I dismiss the Landlord's application for loss of rent for April, 2009.

I dismiss the Landlord's application for late fees for the months of March and April, as the tenancy ended on February 23, 2009.

The Landlord has been largely successful in his application and is entitled to recover the cost of the filing fee from the Tenants.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposits, together with interest accrued thereon, towards satisfaction of his monetary order.

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

Rent arrears for February, 2009	\$2,857.00
NSF fee for returned February rent cheque	\$25.00
Loss of rent for March, 2009	\$2,857.00
Recovery of the filing fee	\$100.00
Less security deposits and interest of \$53.13	<u>&lt;\$1,553.13&gt;</u>
TOTAL:	\$4,285.87

### **Conclusion**

I grant the Landlord a monetary order under section 67 of the Act for \$4,285.87. 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.

April 20, 2009

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