



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application from the landlord for an order of possession, a monetary order in compensation for unpaid rent, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee for this application. The landlord's agent participated in the hearing and gave affirmed testimony. Despite being served in person on March 5, 2009 with the application for dispute resolution and notice of hearing, the tenant did not appear.

Issues to be Decided

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the original term of the tenancy was from October 1, 2005 to September 30, 2006. Thereafter, tenancy has continued on a month-to-month basis. Rent in the amount of \$910.00 is payable in advance on the first day of each month, and a security deposit of \$425.00 was collected on September 30, 2005.

The tenant failed to pay the rent due on February 1, 2009, in addition to previously unpaid rent which was carried forward. Accordingly, the landlord issued a 10 day notice to end tenancy for unpaid rent. The landlord submitted into evidence a copy of the 10 day notice dated February 5, 2009 which was personally served on the tenant on that

same date. Subsequently, the tenant made installment payments on overdue rent with the result that the currently overdue amount totals \$3.60.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord's agent, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice which was February 15, 2009. Accordingly, I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$53.60. This is comprised of outstanding rent of \$3.60 in addition to recovery of the \$50.00 filing fee. I order that the landlord withhold this amount from the combined amount of the security deposit plus interest of \$440.04 (\$425.00 & \$15.04), and return the balance to the tenant of \$386.44 (\$440.04 - \$53.60).

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

DATE: April 30, 2009

Dispute Resolution Officer