



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession for unpaid rent and a Monetary Order for loss of rent, recovery of the late payment fee, and filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, by leaving a copy with the tenant on March 16, 2009, the same date that the landlord received the hearing package.

The landlord appeared, gave affirmed testimony, and was provided the opportunity to present her evidence orally, in writing, and documentary form.

No one attended for the tenant, despite being served the hearing documents.

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 *Act*.
- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss.
- Whether the landlord is entitled to monetary compensation under section 72(1) of the *Act* to recover filing fee from the tenant for the cost of this application.

- Whether the landlord is entitled to keep all or part of the security deposit under section 38(1)(d) of the *Act*.

Background and Evidence

The tenancy began as a fixed term tenancy on November 1, 2008 which switched to a month to month term commencing on February 1, 2009. The tenant paid a security deposit in the amount of \$375.00 on October 29, 2008 and rent in the amount of \$750.00 was due on the first of each month.

The landlord testified that the tenant paid only a portion of February 2009 rent and nothing towards March 2009 rent. On February 5, 2009 the landlord issued a 10 day notice to end tenancy listing a move out date of February 15, 2009, and delivered the notice by hand to the tenant at the rental unit.

The landlord filed an Application for Dispute Resolution on March 12, 2009.

The landlord advised that the tenant paid \$227.50 towards February rent leaving \$522.50 outstanding for February, \$750.00 outstanding for March 2009, and two late payment fees of \$25.00 each.

The landlord stated that she was told this morning that the tenant may have moved out, however she was not able to confirm this prior to the hearing, so she is still seeking an Order of Possession.

Analysis

Order of Possession. I find that the landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the tenant failed to pay

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the rent within 5 days after receiving this notice, and that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

Claim for unpaid rent and late fee charge. The landlord claims loss of rent of \$522.50 for February and \$750.00 for March 2009, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due, and late payment charge of \$25.00 for each month for a total of \$50.00, pursuant to section 7(d) of the *Regulations*.

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

Claim to keep all or part of security deposit. I find that the landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim to be offset against the tenant's security deposit of \$375.00 plus interest of \$0.98 for a total of \$375.98.

Conclusion

I find that the landlord is entitled to an Order of Possession for which a formal order has been issued. This Order must be served on the tenant and is enforceable through the Supreme Court of British Columbia.

I find that the landlord is entitled to a Monetary Order, including recovery from the tenants of the filing fee for this proceeding as follows:

Unpaid Rent (\$522.50 Feb & \$750.00 Mar)	\$1272.50
Late payment fees (2 x \$25.00)	50.00
Filing fee	50.00



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Sub total (Monetary Order in favor of the landlord)	\$1,372.50
Less Security Deposit and Interest	-375.98
TOTAL MONETARY ORDER IN FAVOR OF THE LANDLORD	\$996.52

I hereby grant a Monetary Order of \$996.52 in favor of the landlord. This Order must be served on the respondent and is enforceable through the Provincial Court of British Columbia.

The landlord's copy of this decision is accompanied by the Order of Possession and the Monetary Order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 06, 2009.

Dispute Resolution Officer