



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

OPR, MNR, & FF

Introduction

This hearing dealt with an application by landlord seeking an Order of Possession and a monetary claim due to non-payment of rent by the tenant. Although the tenant was served with notice of this application and hearing in person on February 18, 2009, he did not appear. I proceeded with the hearing in the tenant's absence being satisfied that the tenant was served in accordance with section 89 of the *Act*.

Issues to be Determined

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence submitted by the landlord.

Background and Evidence

This tenancy began on December 1, 2008 for the monthly rent of \$1,020.00 and a security deposit of \$510.00. The tenant was served with a 10 day Notice to End Tenancy due to non-payment of rent on January 9, 2009 when it was posted to the door of the rental unit.

Subsequently the tenant's rent cheques for February, March and April have all failed to cash. However, the tenant did make the following partial payments:

January 23, 2009	\$995.00
February 5, 2009	\$600.00
March 2, 2009	\$640.00
April 1, 2009	\$620.00
Total	\$2,855.00

The landlord accepted the payments but did not provide any receipts or anything in writing to indicate that the payments were being accepted for "use and occupancy only".

The landlord also seeks non-sufficient funds charges of \$25.00 for the four months and recovery of the filling fee paid for this application in addition to the outstanding rent owed of \$1,225.00. The landlord did not provide a copy of the tenancy agreement.

The landlord also requests an Order of Possession effective **April 30, 2009**.

Analysis

I have carefully considered the landlord's application and find that the landlord has only established a monetary claim for the sum of \$1,225.00. I do not accept the landlord's request to recover the sum of \$100.00 for NSF charges as the landlord did not provide a copy of the tenancy agreement establishing that these types of charges were part of the agreement.

I also find that the landlord is not entitled to an Order of Possession. While I accept that the tenant has breached the tenancy agreement and failed to respond to the 10 day Notice to End Tenancy, I find that the landlord has implicitly reinstated the tenancy by accepting payments towards the rent owed without the clear demonstration that the landlord intended to enforce the 10 day Notice to End Tenancy.

I find that by accepting payments after the effective date of the 10 day Notice to End Tenancy and by failing to issue receipts with the clear indication that the money was only being accepted for the "use and occupancy" of the premise the landlord implicitly waived the right to enforce the 10 day Notice to End Tenancy.

I grant the landlord's application in part and grant the landlord a monetary Order for the sum of **\$1,275.00** comprised of the outstanding rent owed plus the recovery of the \$50.00 filling fee paid by the landlord for this application. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is granted in part. I have issued the landlord a monetary Order for the outstanding rent owed by the tenant. However, I have dismissed the landlord's request for an Order of Possession on the basis that the landlord waived his legal right enforce the notice.

The landlord has the right to issue a new Notice to End Tenancy due to non-payment of rent.

Dated April 09, 2009.

Dispute Resolution Officer