



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. Both parties appeared at the hearing and had an opportunity to be heard.

Issues(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession for unpaid rent?
2. Has the landlord established an entitlement to a Monetary Order and if so, the amount?

Background and Evidence

Upon hearing undisputed testimony of the parties, I make the following findings. The tenancy commenced approximately 17 years ago. The tenant is required to pay rent of \$676.00 on the 23rd day of every month. On April 21, 2008 the parties attended a Dispute Resolution Hearing and the landlord was granted a Monetary Order for unpaid rent up to and including March 2008 in the amount of \$3,550.00. The landlord was also provided with an Order of Possession at that time; however, it was not enforced.

The landlord served the tenant with a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on January 12, 2009. The Notice indicated that as of December 23, 2008 the tenant owed \$5,405.00. The tenant did not dispute the Notice within five days of receiving the Notice or pay the outstanding rent. The landlord acknowledged that the amount appearing on the Notice included rent previously awarded to the landlord in the previous dispute resolution hearing.

As the landlord has been previously awarded a Monetary Order for unpaid rent up to and including March 2008, the parties were informed that any Monetary Order granted as a result of today's hearing would not include amounts prior to April 2008. The Monetary Order previously granted to the landlord remains enforceable. Since the last dispute resolution hearing, the parties agreed that the following amounts have been incurred and paid up until today's date:

<u>Description</u>	<u>Amount</u>	<u>Balance</u>
Payments and credits:		
April 2008 payment	\$ 350.00	
April 2008 payment	600.00	
May 2008 payment	680.00	
June 2008 payments	685.00	
July 2008 payments	710.00	
August 2008 payment	700.00	
October 2008 payments	1,000.00	
November 2008 payment	500.00	
January 2009 payment	700.00	
Credit for work performed by tenant in 2008	240.00	
Credit for work performed by tenant in 2009	<u>85.00</u>	
Total payments and credits	\$ 6,250.00	<u>(6,250.00)</u>
Balance owing up to and including April 23, 2009		<u>\$ 2,538.00</u>

The tenant promised to pay the landlord \$1,000.00 by the end of May 2009 and every month thereafter until such time the overpayment of \$324 (\$1,000.00 – \$676) fully pays the Monetary Orders provided to the landlord. The landlord is willing to permit the

tenant use and occupancy of the rental unit until the end of May 2009 and thereafter, provided the tenant pays \$1,000.00 per month as promised.

The landlord requested that an Order of Possession be provided to him in the event the tenant does not fulfill his promise to pay \$1,000 by the end of May 2009 and every month thereafter until the Monetary Orders are repaid. The landlord was cautioned that the Order of Possession may not be enforceable in The Supreme Court of British Columbia if the Order of Possession is not served upon the tenant in a reasonable amount of time after its issuance. The landlord testified that he has no intention to enforce the Order of Possession if the tenant continues to pay \$1,000.00 per month until the arrears are settled.

Analysis

Where a tenant does not dispute a 10 Day Notice to End Tenancy or pay the outstanding rent within five days of receiving the Notice, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date appearing on the Notice.

Upon review of the evidence before me, I am satisfied that the landlord is entitled to an Order of Possession. I provide the landlord with an Order of Possession effective TWO (2) DAYS after service of the Order upon the tenant. As the landlord was willing to wait until the end of May 2009 to allow the tenant to make a partial payment towards the rental arrears, the landlord may not serve the Order of Possession any sooner than May 31, 2009. The Order of Possession must be served upon the tenant to be enforceable and it may be filed in The Supreme Court of British Columbia to be enforced as an Order of that court.



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I am satisfied that the landlord is entitled a Monetary Order in the amount of \$2,538.00 for unpaid rent from April 2008 to April 2009. The Monetary Order provided with this decision does not replace the Monetary Order previously provided to the landlord for rent owing up until March 2008. The landlord is at liberty to enforce the unpaid balance of both Monetary Orders by serving them upon the tenant and filing them in Provincial Court (Small Claims) to enforce as Orders of the court.

Conclusion

The landlord is provided with an Order of Possession effective two days after service upon the tenant. The Order of Possession cannot be served before May 31, 2009.

The landlord is provided with a Monetary Order in the amount of \$2,538.00 for unpaid rent up from April 2008 through April 2009.

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: May 01, 2009.

Dispute Resolution Officer