Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes   OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, loss of rent, retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord provided documentary evidence that the landlord served the tenant with notification of today's hearing by registered mail addressed to the tenant at the rental unit. The landlord affirmed that the tenant was living at the rental unit when the registered mail was sent. Having been satisfied that the landlord adequately served the tenancy in accordance with the requirements of the Act, the hearing proceeded without the tenant present.

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 for unpaid rent and if so, the amount?
3. Retention of the security deposit.
4. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the landlord and review of the tenancy agreement, I make the following findings. The tenancy commenced October 25, 2008. The tenant is required to pay rent of $960.00 on the 1st day of every month. The tenant paid a $480.00 security deposit on October 25, 2008. The tenant paid $315.00 towards

April 2009 rent at the end of March 2009 and did not pay anything towards rent after that. The landlord posted a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on the tenant's door on April 6, 2009. The tenant did not dispute the Notice or pay the outstanding rent. The Notice has an effective date of April 16, 2009. The tenant continues to reside in the rental unit.

In making this application, the landlord was requesting a Monetary Order for $1,655.00 which is comprised of $645.00 in outstanding for April 2009, a late fee of $25.00 for April 2009, loss of $960.00 in rent for May and a late fee of $25.00 for May 2009. The tenancy agreement provides that the tenant shall pay a late fee of $30.00 where rent is paid late after the 4th day in the month in which the rent is due; however, the landlord acknowledged the term exceeds the $25.00 maximum allowed by the regulations and only requested $25.00 for April and May 2009.

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 and the tenant will have to vacate the rental unit by the effective date.

Since the Notice was posted on the door on April 6, 2009 it is deemed to be served upon the tenant on April 9, 2009 in accordance with section 90 of the Act. As the tenant did not pay the outstanding rent or dispute the Notice within five days of April 9, 2009, I am satisfied that the tenancy ended on April 19, 2009. Although the effective date on the Notice is incorrect, an incorrect effective date does not invalidate the Notice; rather, the Notice is automatically changed to comply with the Act. Since the tenancy has ended and the tenant continues to reside in the rental unit, the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of

Possession effective two days after service of the Order of Possession upon the tenant. The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover unpaid rent of $645.00 for April 2009 and loss of rent of $960.00 for May 2009 from the tenant. I also grant the landlord's request for a late fee for April 2009; however, I do not grant the late fee for May 2009 since the tenancy ended in April 2009.

As the landlord was largely successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit and accrued interest in partial satisfaction of the amount owed by the tenant. I provide for the landlord with this decision a Monetary Order calculated as follows:

Unpaid rent – April 2009	$ 645.00
Late fee – April 2009	25.00
Loss of rent – May 2009	960.00
Filing fee	50.00
Less: security deposit and accrued interest	(481.34)
Monetary Order	$ 1,198.66

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is provided an Order of Possession effective two days after serve upon the tenant.

The landlord is authorized to retain the tenant's security deposit and interest in partial satisfaction of the rent owed the landlord. The landlord is also provided a Monetary Order in the amount of $1,198.66.

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 15, 2009.

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Dispute Resolution Officer