

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

I have been delegated authority under section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord’s agent gave affirmed testimony at the Hearing and the Hearing proceeded on its merits.

Issue(s) to be Decided

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 for the months of February, March and April, 2009; keep all of the security deposit paid by the Tenant; 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 Act.

Background and Evidence

The Landlord's agent gave the following evidence and oral testimony:

- The Landlord provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 4, 2009, with an effective vacancy date of April 17, 2009 for \$1,650.00 in unpaid rent.
- The Tenant has lived in the rental unit for approximately 2 years. Monthly rent is currently \$550.00, due on the first of the month. The Tenant paid a security deposit in the amount of \$275.00 on February 1, 2007.
- The Landlord’s agent testified that he personally served the Tenant with a copy of the 10 Day Notice to End tenancy at the Tenant’s residence on April 4, 2009, between 6:00 and 7:00 p.m.

- The Landlord's agent testified that he personally served the Tenant with the Notice of Hearing documents at the Tenant's residence on April 21, 2009, in the evening.
- The Landlord's agent testified that the Tenant remains in the rental unit and has not paid any of the rent arrears for February, March and April, 2009.

Analysis

I accept the Landlord's agent's testimony with respect to service of the 10 Day Notice to End Tenancy. Section 90 of the Act deems service in this manner to be effected on the day the Tenant was personally served. Therefore, the effective end of the tenancy was April 14, 2009. The Tenant did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days of being served with the Notice. Further to Section 46(5) of the Act, I find that the Tenant was conclusively presumed to have accepted that the tenancy ended on April 14, 2009, 10 days after service was affected. The Landlord is entitled to an immediate Order of Possession and I make that Order.

I accept the Landlord's agent's testimony that the Tenant was personally served with the Notice of Hearing documents on April 21, 2009. Despite being duly served with the documents on April 21, 2009, the Tenant did not appear at today's Hearing and the Hearing proceeded in his absence.

I find that the Landlord is entitled to a monetary claim against the Tenant and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit.

The Landlord has been successful in her Application and is entitled to recover the filing fee from the Tenant. The Landlord has established a Monetary Order, as follows:

Unpaid Rent for February, March and April, 2009	\$1,650.00
Filing fee	50.00
Sub total (Monetary Order in favor of the Landlord)	\$1,700.00
Less Security Deposit of \$275.00 plus interest of \$7.95	-\$282.95
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,417.05

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim in the amount of \$1,417.05 against the Tenant. The monetary Order must be served on the Tenant and is enforceable through the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Dated: May 27, 2009.
