

DECISION

Dispute Codes OPR MNR MNDC 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 agents gave affirmed testimony at the Hearing and the Hearing proceeded on its merits.

Preliminary Matter

At the onset of the Hearing, the Landlord’s agent DS testified that the Tenant paid the Landlord the amount of \$1,674.00 for the months of April and May, 2009. The Landlord’s agent testified that she accepted the payment “for use and occupancy only” and explained to the Tenant that the tenancy was not being reinstated.

The Landlord’s monetary claim for rent arrears for April, 2009, and for loss of rent for May, 2009, is therefore dismissed without leave to reapply.

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 loss of rent for the month of June, 2009; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 55, 67, and 72 of the Act.

Background and Evidence

The Landlord’s agents gave the following evidence and oral testimony:

- The Landlord provided a copy of a residential tenancy agreement which was signed by the Tenant on September 16, 2005.

- Monthly rent is currently \$837.00, due on the first of the month. The Tenant paid a security deposit in the amount of \$375.00 on September 7, 2005.
- The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 2, 2009, with an effective vacancy date of April 15, 2009 for \$837.00 in unpaid rent.
- The Landlord's agent BG testified that he served the Tenant with a copy of the 10 Day Notice to End tenancy by posting the Notice on the Tenant's door at the rental unit on April 2, 2009 at 7:28 p.m.
- The Landlord's agent DS testified that the Tenant was mailed the Notice of Hearing documents, together with copies of the evidence, by registered mail, on April 22, 2009. The Landlord provided a receipt and tracking number for the registered mail documents, along with a signed statement of service by an agent of the Landlord. The Landlord's agent DS testified that the item was returned to the Landlord on May 26, 2009, unclaimed.
- The Landlord's agent DS testified that the Tenant remains in the rental unit.

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 3rd day after posting the document to the Tenant's door. Therefore, the effective end of the tenancy was April 15, 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. The Tenant paid the Landlord \$1,674.00 on May 26, 2009. In the absence of any evidence to the contrary from the Tenant, I find that the Landlord accepted this payment for "use and occupancy only" and did not reinstate the tenancy. 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 15, 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 mailed the Notice of Hearing documents, by registered mail, on April 22, 2009. Section 90 of the Act deems service of documents in this manner to be effected on the 5th day after mailing the documents. Despite being deemed served with the documents on April 27, 2009, the Tenant did not appear at today's Hearing and the Hearing proceeded in his absence.

The Landlord's claim for loss of rent for the month of June, 2009, is premature. This portion of the Landlord's claim is therefore dismissed, with leave to re-apply.

The Landlord has been successful in its Application and is entitled to recover the filing fee from the Tenant. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord may deduct \$50.00 from the security deposit paid by the Tenant.

Conclusion

The Landlord's claim for a monetary order for rent arrears for the month of April, 2009, and loss of rent for the month of May, 2009, is dismissed without leave to re-apply.

The Landlord's claim for a monetary order for loss of rent for the month of June, 2009, is dismissed with leave to re-apply.

The Landlord is entitled to recover the filing fee for the cost of this Application from the Tenant. The Landlord may deduct \$50.00 from the security deposit paid by the Tenant.

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.

Dated: May 27, 2009.
