



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord for an Order of Possession and a Monetary Order for unpaid rent, for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were hand delivered to the tenant on April 08, 2009. The tenant confirmed she had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues(s) to be Decided

- Whether the landlord is entitled to an Order of Possession?
- Are there arrears of rent and if so, how much?
- Whether the landlord is entitled to a Monetary Order for loss of income?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?

Background and Evidence

The tenant moved into the rental unit on May 16, 2005 and their rent is \$765.00 per month payable on the 1st of each month. As the tenant was working part time she came to an agreement with the landlord that she could pay her rent every two weeks. When this employment ended she reverted to paying rent at the end of each month. A security deposit of \$ 370.00 was paid on May 02, 2005. The landlord testifies the tenant owes a shortfall in rent for July, 2006 and a shortfall for May, July, September, October, November and December, 2008 totaling \$1853.62. As a result of unpaid rent for these months the landlord served the tenant with a Notice to End Tenancy for Unpaid Rent on March 09, 2009. This was posted on the tenants' door however, the tenant disputes receiving this notice. The landlord testifies that she must have received the Notice as they held a meeting in her office to discuss the eviction. On a balance of probability I uphold the landlords' testimony that a 10 Day Notice was received by the tenant. Since this time the tenant has not paid rent for April and May, 2009 totaling \$1530.00.

The landlord has requested an Order of Possession and a Monetary Order for the unpaid rent. The landlord has also requested a Monetary Order for loss of revenue for May, 2009, but as the tenant is still residing at the rental unit this will be included as rent arrears. The landlord has asked to retain the tenants' security deposit in partial payment of the outstanding rent and to recover the filing fee for this application.

Analysis

I find that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

The tenant did not pay the rent nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the Act, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

The tenant does not dispute the fact that she owes the landlord rent to the sum of \$3383.62. Based on this I uphold the landlords application for a Monetary Order. The landlord may retain the tenants' security deposit and any accrued interest in partial payment towards the rent arrears.

As the landlord has been successful with their application I find that they are entitled to recover the filing fee for the cost of this application.

The landlords are entitled to a Monetary Order as follows:

| | |
|--|------------------|
| Rent outstanding | \$3383.62 |
| subtotal | \$3433.62 |
| Less security deposit and accrued interest | -\$383.10 |
| Total owing | \$3050.52 |

Conclusion



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An order of Possession has been issued to the landlord. A copy of the Orders must be served on the tenant and the tenant must vacate the rental unit **two days** after service. The Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary order in the amount of **\$3050.52** has been issued to the landlord and a copy of it must be served on the tenant. If the amount of the order is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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 05, 2009.

Dispute Resolution Officer