



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent, a Monetary Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the tenant on April 14, 2009.

Both parties appeared, gave their testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the 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?
- Whether the Landlord is entitled to a Monetary Order to recover unpaid rent?
- Whether the landlord is entitled to keep all or part of the security deposit in partial payment towards any rent arrears?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?

Background and Evidence

This tenancy started on August 01, 2007. Rent is \$1,100.00 per month payable on the 1st of each month. The tenant paid a security deposit on August 01, 2009 of \$455.65. The tenant has not paid rent for April by the due date and the landlord issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent on April 02, 2009. On April 21, 2009 the tenant paid \$500.00 towards his rent arrears. The tenant paid his rent for May, 2009. The landlord gave the tenant a receipt marked for use and occupancy only.

The tenant does not dispute that he owes rent in the sum of \$600.00 for April, 2009. The tenancy agreement between the tenant and landlord allows the landlord to recover \$20.00 per month in late fees.

The landlord has requested an Order of Possession and a Monetary Order to recover the unpaid rent and late fees for April, 2009.

Analysis

I find that there is no dispute of the fact that the tenant owed arrears of \$600.00 for rent that was due on April 01, 2009. Payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid within five days but \$500.00 was paid on April 21, 2009. Payment was accepted by the landlord for use and occupancy only. Therefore the Ten-Day Notice still remained in effect. I find that the Notice for unpaid rent was supported under the *Act* and section 46 of the *Act* was fully met. Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession.

The tenant does not dispute the fact that he owes the landlord rent to the sum of \$600.00 and a late fee of \$20.00. Based on this I uphold the landlords application for a

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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 of \$50.00 for the cost of this application.

The landlords are entitled to a Monetary Order as follows:

Rent arrears and late fee	\$620.00
Less security deposit and accrued interest	(-\$465.39)
Total amount to pay	\$204.61

Conclusion

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 **\$204.61** 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 25, 2009.

Dispute Resolution Officer