



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

2

Decision and Reasons

Dispute Codes:

FF,

MNR,

OPR,

MNSD

Introduction

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

The Landlord gave affirmed evidence at the Hearing and the Hearing proceeded on its merits.

Introduction

This is the Landlord’s application for an Order of Possession; a Monetary Order for unpaid rent; to keep the security deposit paid by the Tenants; and to recover the filing fee from the Tenant for the cost of the application.

Background and Evidence

The Landlord testified that he personally served the Tenants the Notice to End Tenancy for Unpaid Rent on April 15, 2009, at the Tenant’s residence.

The Landlord testified that he personally served both of the Tenants with the Notice of Hearing package on April 29, 2009, at 9:15 a.m., at the Tenant's residence.

The Landlord testified that the monthly rent for the rental unit is \$370.00, due on the first day of each month. The Tenants have not paid any rent since March, 2008. The Landlord testified that he was granted a Monetary Order on July 8, 2008 in the amount of 1,530.00 for unpaid rent and recovery of the filing fee. The Landlord testified that he filed the Monetary Order in Small Claims Court on April 3, 2009.

The Landlord testified that he was granted an Order of Possession against the Tenants on July 8, 2008, with an effective date of July 31, 2008. The Landlord testified that he has not filed the Order in Supreme Court for enforcement, because he was attempting to help the Tenants, one of which is ill.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent for the months of August, 2008 to April, 2009.

The Landlord testified that the Tenants paid a security deposit in the amount of \$100.00. The Landlord testified that he purchased the rental property 3 ½ years ago when the tenancy was already in place, and he was not certain what date the security deposit was paid to the previous landlord. The Landlord withdrew his application to apply the security deposit paid by the Tenants against any monetary order in his favour.

The Landlord testified that the Tenants changed the locks on the rental property and did not give him a key.

Analysis

I accept the Landlord's testimony that he duly served the Tenants with the Notice to End Tenancy issued April 3, 2009. Therefore the effective date of the end of tenancy was April 13, 2009. The Tenants did not pay the outstanding rent and did not dispute the

Notice to End Tenancy within 5 days of being served. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on April 13, 2009. Therefore, the Landlord is entitled to an immediate Order of Possession and I make that Order. I cautioned the Landlord in the Hearing that if he fails to enforce this Order of Possession, he may be estopped from making application for an Order of Possession for this cause of action in the future.

I accept the Landlord's testimony that he personally served both of the Tenants with the Notice of Hearing package, on April 29, 2009. Despite being duly served, the Tenants did not appear at the Hearing and this Hearing proceeded in their absence.

In the absence of any evidence to the contrary from the Tenants, I accept the Landlord's testimony that the Tenants did not pay any rent for the months of August 2008 to April, 2009, in the amount of \$3,330.00. I therefore find that the Landlord is entitled to a monetary order for that amount.

Pursuant to Section 62(3) of the Act, I order the Tenants to provide the Landlord with a key to the rental unit immediately.

The Landlord has been successful in his application and is entitled to recover the \$50.00 filing fee from the Tenants.

The Landlord has established a monetary claim in the amount of \$3,380.00, for unpaid rent and for recovery of the filing fee. The Landlord did not apply for loss of rent for the months of May and June, 2009, and is at liberty to make that application in the future, if he so desires.

Conclusion

Pursuant to Section 62(3) of the Act, I order the Tenants to provide the Landlord with a

key to the rental unit immediately.

Pursuant to Section 67 of the Act, I hereby grant the Landlord a Monetary Order in the amount of \$3,380.00 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

Pursuant to Section 55 of the Act, I hereby grant the Landlord an Order of Possession, **effective 2 days from service of the order upon the Tenants.** This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

June 3, 2009
