



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 landlords for an Order of Possession and a Monetary Order to recover unpaid rent. At the outset the landlord requested to add to their claim to keep all or part of the tenants' security deposit and to recover the filing fee. I have allowed this addition to the claim.

The landlord served the tenant with a copy of the Application and Notice of Hearing by registered mail and by posting a copy on the tenants' door on May 05, 2009. The landlords were not sure if the tenant was out of the country at the time so took steps to contact him and spoke to the tenants' references and emergency contacts provided. The landlords were told that the tenant was returning to the rental unit. I find that the landlords did everything they could to inform the tenant of this hearing and pursuant to s. 90 of the *Act* I find that the tenant was properly served pursuant to s. 89 of the *Act* with notice of this hearing. The hearing proceeded in the tenant's absence.

The landlord and property managers appeared were provided the opportunity to present their evidence orally, in written form, documentary form and make submissions to me. On the basis of the evidence presented at the hearing I have determined:

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?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?

Background and Evidence

This tenancy started on May 01, 2008. Rent is \$1100.00 per month payable on the 1st of each month. The tenant paid a security deposit of \$550.00 on May 01, 2008. The tenant has not paid rent for February, March, April, May and June, 2009. The tenants rent cheques came back as insufficient funds were available to honour them. The tenancy agreement states that the landlord is able to charge the tenant \$25.00 for late fees each month and \$25.00 for un-cleared cheques each month.

The landlords believe the tenant has been out of the country and have made attempts to contact him about the returned cheques and outstanding rent. The tenant has not replied to e-mails sent. The tenants emergency contact person and persons given as references on his application indicated that the tenant was in Calgary and would shortly be returning to the rental unit. The landlords served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on April 06, 2009 by posting the notice on the tenants door.

Analysis

I find that as the landlord was told that the tenant was out of the country they can not assume the tenant has abandoned the rental property. The landlords have followed the correct procedures to contact the tenant and in issuing the tenant with both the 10 Day Notice and Notice of this hearing.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 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 landlord application is for a Monetary Order for unpaid rent for February, March and April, 2009 of \$3,300.00 plus late fees and fees for returned cheques of \$150.00. The tenant now owes rent for May and June, 2009 of \$2200.00 and late fees and unpaid cheque fees of \$100.00. As this exceeds the amount the landlords have originally claimed and the amount on the 10 day Notice given to the tenant. Therefore, a Monetary Order will be issued for the original claim only and the landlords may re-apply for the additional months of May and June, 2009.

The landlords have amended their claim to keep the tenants security deposit in partial payment towards the rent arrears. As the landlords have been successful with their application I award them \$50.00 for the filing fee.

A Monetary Order will be issued as follows:

Outstanding rent for February, March, April	\$3,300.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$555.52)
Total	\$2,944.48

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 **\$2,944.48** 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.

The landlord has leave to re-apply for the additional rent outstanding for May and June, 2009.

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: June 05, 2009.

Dispute Resolution Officer