



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 posted on the tenants door on May 04, 2009. The tenant confirmed he had received them.

Both parties appeared, gave their affirmed 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?



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Background and Evidence

This tenancy started on July 01, 2007. Rent is \$550.00 per month payable on the 1st of each month. The tenant paid a security deposit of 275.00 on June 28, 2007. The tenant has not paid rent for February, March, April, May and June and the landlord issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent by registered mail on April 17. This was uncollected by the tenant. When this item was returned to the landlord a copy was posted on the tenants' door. The landlords' application also claims rent for July, 2009 but as this hearing is being heard today the landlord is premature in his application to claim rent in advance for July and this portion of his claim is dismissed. The landlord testifies that other tenants in the building have some fears and concerns about the tenant remaining in the rental unit but as this does not form part of this hearing this evidence will not be heard.

The tenant testifies that he did not receive the 10 Day Notice as he was working away from home. He does not dispute that he owes the landlord rent and is hoping to have funds available by the end of this week to pay the outstanding rent arrears. The tenant states that he would like to remain in the rental unit and will talk to the other tenants to dispel their fears over an incident that happened when he was working away from home.

The tenant agrees to pay the landlord the outstanding rent before June 15, 2009 and to talk to the other tenants. The landlord has requested an Order of Possession to take effect on June 15, 2009 if the tenant does not pay the rent arrears and if the other tenants continue to have concerns with his tenancy.

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Analysis

I accept 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 to take effect on June 15, 2009.

I find that there is no dispute to the fact that the tenant owes arrears of **\$2,750.00** for rent that was due for February, March, April, May and June, 2009. 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. If the tenant pays all of the outstanding rent of **\$2,750.00** before June 15, 2009 and the landlord agrees that the tenancy may continue then the landlord must retain the tenants' security deposit until such a time that the tenant moves out of the rental unit.

As the landlord has been successful with his application I find that he is entitled to recover the filing fee of \$50.00 for the cost of this application.

The landlord is entitled to a Monetary Order as follows:

Rent arrears	\$2,750.00
Less security deposit and accrued interest	(-\$281.27)
Total amount to pay	\$2,518.73

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 on **June 15, 2009**. The Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary Order in the amount of **\$2,518.73** 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: June 08, 2009.

Dispute Resolution Officer