

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MNDC, FF

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.

This Hearing was scheduled to determine the Landlord’s application for an Order of Possession for Unpaid Rent; a monetary order for unpaid rent and the security deposit unpaid by the Tenant; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord gave affirmed testimony and this matter proceeded on its merits.

Issues to be determined

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a monetary order and if so, in what amount?
3. Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The Landlord gave the following testimony:

- The Landlord served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent on April 6, 2009, by posting the Notice to the Tenant’s door.
- On April 16, 2009, the Landlord mailed the Notice of Hearing documents, by registered mail, to the Tenant’s residential address. The Landlord provided a

copy of the registered mail receipt and tracking number. The Canada Post tracking site indicates that the Tenant signed for the documents on May 2, 2009.

- Monthly rent is \$750.00, due on the first day of each month. The Tenant provided the Landlord with a cheque in the amount of \$375.00 for a security deposit, but the cheque was returned “insufficient funds”.
- The Tenant was in arrears of rent for the month of April in the amount of \$750.00. On the Landlord’s Application for Dispute Resolution, the Landlord applied for loss of rent for the month of May in the amount of \$750.00. On May 7, 2009, the Landlord received \$500.00 towards April rent. The Landlord provided the Tenant with a receipt for occupancy only. On May 29, the Tenant provided a further \$1,000.00 towards the remaining rent for April and the rent for May, 2009. The Landlord provided the Tenant with a receipt for occupancy only. The Landlord did not reinstate the tenancy. The Landlord provided copies of the receipts into evidence.
- The Tenant remains in the rental unit. The Landlord asked to amend her application to include damages for loss of rent for the months of June and July, in the amount of \$1,500.00.

Analysis

Sections 88 and 89 of the Act determine the method of service for documents.

I find that the Landlord has proven service of the 10 Day Notice to End Tenancy as set out under Section 88(g) of the Act.

The Landlord has applied for a Monetary Order which requires that the Landlord serve the Tenant with the Notice of Hearing documents, as set out under Section 89(1). The Landlord has applied for an Order of Possession which requires that the Landlord serve the Tenant with the Notice of Hearing documents, as set out under Section 89(2).

Based on the testimony and evidence of the Landlord, I find that the Landlord has proven service of the Notice of Hearing documents upon the Tenant.

Section 90 of the Act determines the effective date of service of documents. The Notice to End Tenancy was served by posting the document on the Tenant's door on April 6, 2009. Section 90 of the Act deems service in this manner to be effected 3 days after posting the document. Therefore the effective date of the end of tenancy was April 19, 2009. Pursuant to Section 68 of the Act, I amended the Notice to reflect the correct effective date of the end of tenancy.

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 rental arrears, or apply to dispute the Notice to End Tenancy within five days. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on April 19, 2009. The Tenant provided the Landlord with \$1,500.00 towards rent for the months of April and May, 2009. The Landlord provided the Tenant with receipts marked "for occupancy" and did not reinstate the tenancy.

The Landlord applied to amend her Notice of Dispute Resolution to include loss of rent for the months of June and July, 2009. The Tenant remains in the rental unit, and I find that amending the Landlord's application does not prejudice the Tenant. I allow the Landlord to amend her application.

Order of Possession - Further to Section 46(5) of the Act, I find that the Tenant was conclusively presumed to have accepted that the tenancy ended on April 19, 2009, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

Monetary Order – I find that the Landlord is entitled to a monetary claim against the Tenant for loss of rent for the months of June and July, 2009. I dismiss the Landlord's application for a monetary order for the unpaid security deposit. The Landlord has been

successful in her Application and is entitled to recover the filing fee from the Tenant.

The Landlord has established a Monetary Order, as follows:

Loss of Rent for June and July, 2009	\$1,500.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,550.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim in the amount of \$1,550.00 against the Tenant. The monetary Order must be served on the Tenant and is enforceable through the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Dated: July 16, 2009.
