

## Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

### Decision

**Dispute Codes:** OPR, MNSD, MNDC, MNR, 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 is a Review Hearing of a decision and orders dated June 2, 2009. The Respondent’s application to review the decision was granted on June 10, 2009, on the basis that she was unable to attend the hearing because of circumstances that could not be anticipated and were beyond her control.

The parties gave affirmed testimony and the Review Hearing proceeded on its merits.

### **Issue(s) to be Decided**

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

- (1) Is the Landlord entitled to an Order of Possession?
- (2) Is the Landlord entitled to a monetary order?
- (3) Is the Landlord entitled to recover the filing fee from the Tenant?
- (4) Is the Landlord entitled to keep all or part of the security deposit?

## **Background and Evidence**

The tenancy started on September 1, 2008. The monthly rent is \$650.00, due on the first day of the month. The Tenant paid a security deposit to the Landlord in the amount of \$325.00 on September 1, 2008.

### **Landlord's agent's testimony**

- On April 6, 2009, the Landlord's agent served the Tenant with the Notice to End Tenancy, by leaving a copy of the Notice at the Tenant's residence with an adult who apparently resides with the Tenant. The Landlord's agent testified that he knew the person to be the Tenant's son.
- The Landlord's agent mailed the Tenant the Application for Dispute Resolution and hearing package on March 28, 2009, by registered mail, to the Tenant's residential address. The Landlord provided a copy of the registered mail receipt and tracking number.
- The Landlord's agent also attended at the Tenant's residence on April 29, 2009, at 1:40 p.m. to post the Notice of Hearing documents to the Tenant's door. The Tenant's son was at the rental unit, and had a conversation with the Landlord's agent about his bike.
- The Tenant remains in the rental unit and has not paid the Landlord rent since March 1, 2009.

### **Tenant's testimony**

- The Landlord's agent served the Notice to End Tenancy to a person at the wrong address. The Landlord's agent mailed the Notice of Hearing documents to the wrong address. The Tenant did not receive the Notice of Hearing documents or any documents because the Landlord's agent had the wrong address.
- The Tenant tried to pay the Landlord rent, but the Landlord refused to accept it.
- The Tenant has not paid rent since March, 2009.
- The Tenant's son is 21 years old.

### Landlord's agent's reply to Tenant's testimony

- The address on the Application for Dispute Resolution and the Notice to End Tenancy is the correct address for the rental unit. It is also the address that is noted on the Tenancy Agreement, a copy of which was provided into evidence.
- The Landlord had issued a Notice to End Tenancy prior to the Notice that is the subject of this Hearing, but it was not on the correct form.
- The Landlord hired the Landlord's agent to assist him, and the Notice to End Tenancy (which is the subject of this Hearing) was issued and served. The Tenant called the Landlord's agent 48 hours after the Landlord served the Tenant's son, so he knows she received the Notice to End Tenancy.
- The Tenant said she wanted to pay the rent, but could not do so within 5 days of being served. The Landlord's agent told her the Landlord wouldn't reinstate the tenancy, but if she paid him after the 5 days of being served, the Landlord would allow her to stay in the rental unit until the end of June to allow her more time to find alternate accommodation. The Landlord's agent waited for two hours for the Tenant to meet him to pay the rent, but she did not turn up. The Tenant knows the Landlord's address and could have mailed the rent payment at any time, but did not do so.

### Analysis

Based on the Landlord's agent's testimony and evidence, I accept that the Tenant was duly served with the Notice to End Tenancy. The Tenant did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy. Pursuant to Section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. In this case, service was affected on April 6, 2009, and the effective end to the tenancy was therefore April 16, 2009.

The Landlord is entitled to an immediate Order of Possession and I make that Order.

I accept the Landlord's agent's testimony that he mailed the Tenant the Notice of Hearing Package and Application for Dispute Resolution, by registered mail to the Tenant's residence, on March 28, 2009. Section 90 of the Act deems documents served in this manner to be received on the 5<sup>th</sup> day after mailing the document.

I accept the Landlord's agent's testimony that he also provided the Tenant's adult son with a copy of the Notice of Hearing documents on April 29, 2009.

Based on the testimony of the Landlord's agent, and the Tenant, I am satisfied that the Tenant has not paid rent for the month of April, 2009, and remains in the rental unit. The Landlord has established a monetary claim for rent arrears in the amount of \$650.00 for April, 2009.

Based on the testimony of the Landlord's agent and the Tenant, the Landlord has established a monetary claim for loss of rent in the amount of \$1,300.00 for May and June, 2009. The Application for Dispute Resolution filed April 24, 2009, does not request loss of rent for the month of July, 2009. The Landlord is at liberty to apply for such damages, if he so chooses.

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

Pursuant to Section 72 of the Act, the Landlord may deduct the security deposit, together with any accrued interest, in partial satisfaction of his monetary claim.

The Landlord has established a Monetary Order, as follows:

Rent arrears for April, 2009	\$650.00
Loss of rent for May and June, 2009	\$1,300.00
Recovery of the filing fee	\$50.00
Less security deposit and interest of \$1.62	<u>&lt;\$326.62&gt;</u>
TOTAL amount due to Landlord after set off	\$1,673.38

## **Conclusion**

Pursuant to Section 55 of the Act, I hereby grant the Landlord 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.

The Monetary Order issued June 2, 2009, in favour of the Landlord, in the amount of \$1,023.38 is cancelled.

Pursuant to Section 67 of the Act, I hereby grant the Landlord a Monetary Order in the amount of \$1,673.38 against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

July 23, 2009

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