

Dispute Codes:

OPR

MND

MNR

MNSD

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 the Landlord’s application for an Order of Possession; a Monetary Order for loss of rent and damages to the rental unit; to keep the security deposit paid by the Tenants; and to recover the cost of the filing fee from the Tenants.

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

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent and damages, and to keep the security deposit paid by the Tenants?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenants?

Background and Evidence

Landlord’s testimony

The Landlord personally served the Tenants with the Notice to End Tenancy on July 5, 2009 at the Tenants’ residential address.

The Landlord personally served the Tenants with the Notice of Hearing documents on July 13, 2009 at the Tenants' residential address.

Monthly rent is \$850.00, due on the first day of each month. The Landlord testified that the Tenants still owe \$490.00 for the month of April, 2009, and have not paid rent for the months of July and August. The Landlord requested loss of rent for the month of September, 2009.

Analysis

I accept the Landlord's testimony that the Notice to End Tenancy was served on the Tenants on July 5, 2009, in accordance with Section 88(a) of the Act. Within 5 days of being served with the Notice, the Tenants did not pay the outstanding arrears or make an application for dispute resolution. Therefore, pursuant to Section 46(5)(a) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on July 15, 2009. The Landlord is entitled to an Order of Possession and I make that Order.

With respect to the Landlord's application for a Monetary Order, there are discrepancies between the amount claimed on the Notice to End Tenancy and the Landlord's Application. The Notice to End Tenancy discloses an amount of \$2,599.00 in unpaid rent. The Landlord's application requests an amount of \$4,799.00 in unpaid rent and loss of rent for the months of May to September, 2009. Based on the monthly rent of \$850.00 and the amount owing on the Notice to End Tenancy, the total amount for unpaid rent and loss of rent would be \$4,299.00. Based on these anomalies, I dismiss the Landlord's application for a monetary order with leave to reapply.

The Landlord has been partially successful in his application and is entitled to recover the cost of the filing fee in the amount of \$50.00 from the Tenants. Pursuant to Section 72 of the Act, the Landlord may deduct the amount of \$50.00 from the security deposit paid by the Tenants. The residue of the security deposit remains available for application by either party, in accordance with the provisions of the Act.

Conclusion

I hereby grant the Landlord an Order of Possession effective two days from service on 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.

I dismiss the Landlord's application for a Monetary Order, with leave to reapply.

The Landlord may retain the amount of \$50.00 from the security deposit. The remainder of the security deposit remains available for application by either party, in accordance with the provisions of the Act.

Dated: August 31, 2009.
