

Dispute Codes:

OPR

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 the Landlord’s application for an early end of tenancy and an Order of Possession; and to recover the cost of the filing fee from the Tenant.

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

Issues to be Decided

- Is the Landlord entitled to an Order of Possession and Monetary Order for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Preliminary Matter

At the onset of the Hearing, the Tenant’s agent requested an adjournment because the Tenant was not available to attend the Hearing. The Tenant’s agent advised that the Tenant was away on work-related business. The Landlord did not consent to adjourning the matter. The Tenant’s agent is also an occupant of the rental unit.

I dismissed the Tenant’s agent’s request for an adjournment. The Tenant’s agent had knowledge of the facts and was able to give testimony in the absence of the Tenant.

Background and Evidence

Facts on which the parties agree:

- There is a written tenancy agreement.
- Monthly rent is \$1,500.00, due on the first day of the month.
- The Tenant has not paid rent for the month of July and August in the amount of \$3,000.00.

- The Tenant paid a security deposit in the amount of \$750.00 to the Landlord.

Landlord's agent's testimony

The Landlord's agent personally served the Tenant with the Notice to End Tenancy on July 3, 2009 at 9:00 p.m. by handing the Notice to End Tenancy to the Tenant at the Tenant's residential address.

The Landlord's agent personally served the Tenant with the Notice of Hearing documents on July 15, 2009 at 1:28 p.m. by handing the documents to the Tenant at the Tenant's residential address.

The Landlord's agent asked for an Order of Possession and a monetary order for unpaid rent for the month of July and for loss of rent for the month of August, 2009.

Tenant's agent's testimony

The Tenant has been trying to arrange for a payment schedule in order to clear up the rental arrears.

Analysis

The Notice to End Tenancy was served on the Tenant on July 3, 2009, in accordance with Section 88(a) of the Act. Within 5 days of being served with the Notice, the Tenant did not pay the outstanding arrears or make an application for dispute resolution.

Therefore, pursuant to Section 46(5)(a) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on July 13, 2009. The Landlord is entitled to an Order of Possession and I make that Order.

Based on the testimony of both parties, I find that the Landlord is entitled to a Monetary Order for unpaid rent for the month of July and for loss of rent for the month of August, in the total amount of \$3,000.00.

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

The Landlord did not make application, under Section 38 of the Act, to keep the security deposit. Therefore, the security deposit, together with any interest accrued thereon, 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 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 grant the Landlord a Monetary Order in the amount of \$3,050.00. The Landlord must serve the Monetary Order on the Tenant, which may be filed in the Provincial Court of British Columbia and enforced as an Order of that Court.

The security deposit in the amount of \$750.00, together with accrued interest, remains available for application by either party, in accordance with the provisions of the Act.

Dated: August 31, 2009.
