

DECISION

Dispute Codes:

OPR; MNR; MNDC; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and damage or loss under the Act, regulation or tenancy agreement; 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 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, and if so, in what amount?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

The Landlord's agent provided a copy of a letter from the Landlord appointing the Landlord's agent with full authority to file the Application for Dispute Resolution and to represent the Landlord at this Hearing.

The Tenancy started on July 1, 2009. Monthly rent is \$950.00 per month, due the first day of each month. The Tenant's cheque for the security deposit and rent for July, 2009, was returned to the Landlord, insufficient funds.

On July 9, 2009, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by handing the Notice to the Tenant.

On August 17, 2009, the Landlord's agent mailed the Tenant the Notice of Hearing documents, by registered mail. The Landlord's agent provided a copy of the registered mail receipt and tracking number.

Between July 9, 2009 and August 17, 2009, the Landlord's agent had several conversations with the Tenant, during which the Tenant would promise to pay the outstanding rent by a certain date, but the date came and went without payment as promised by the Tenant.

On September 1, 2009, the Tenant gave the Landlord's agent his paycheck, post-dated September 2, 2009, in the amount of \$778.45. The Landlord's agent advised the Tenant that he was not reinstating the tenancy. The monthly rent is \$950.00 per month, so the Tenant still owes \$171.55 for the month of July, 2009. The Tenant remains in the rental unit. The Landlord's agent also applied for loss of rent for the month of August, 2009, \$100.00 for the key fob, a move-in fee of \$50.00 and a move-out fee in the amount of \$50.00.

The Tenant filed for personal bankruptcy on August 19, 2009.

Analysis

I accept the Landlord's agent's testimony that the Tenant was served with the Notice to End Tenancy on July 9, 2009. The Tenant did not pay the rent, or file for dispute resolution, within 5 days of being served with the Notice. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on July 19, 2009. The Landlord is entitled to an Order of Possession and I make that Order.

I accept the Landlord's agent's testimony that the Tenant was served with the Notice of Hearing documents by registered mail. Section 90 of the Act deems service in this manner to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing Documents, the Tenant did not sign into the conference and the Hearing proceeded in his absence.

During the Hearing, the Landlord's agent made reference to the Tenant filing for personal bankruptcy. I have no further evidence with respect to this matter (i.e. no formal notice of an Assignment into Bankruptcy).

I accept the Landlord's agent's testimony that the Tenant owes outstanding rent in the amount of \$171.55 for the month of July, 2009. The Landlord is also entitled to loss of rent for the month of August, 2009.

I dismiss the Landlord's agent's claim for \$100.00 for the key fob, as the Tenant remains in the rental unit, and this claim is premature. I dismiss the Landlord's agent's claim for move in/out fees in the total amount of \$100.00. The tenancy agreement, a copy of which was provided, states: "The tenant to arrange for moving and move out with the Strata Council or its representative and pay all related charges to the said body." Therefore, if the Tenant is responsible to pay such fees, it would be to the Strata Council and not to the Landlord.

The Landlord's agent has been partially successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Unpaid rent for the month of July, 2009	\$171.55
Loss of rent for the month of August, 2009	\$950.00
Recovery of the filing fee	\$50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,171.55

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 \$1,171.55 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.

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: September 4, 2009