

DECISION

Dispute Codes:

OPR; MNR; MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; to keep the security deposit and pet deposit; and to recover the cost of the filing fee from the Tenants.

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 Tenants?

Background and Evidence

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

On July 3, 2009, the Landlord's agent served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice to the Tenants' door. The Landlord's agent testified that the Notice remained posted to the door, as at September 2, 2009.

On July 22, 2009, the Landlord's agent mailed the Tenant the Notice of Hearing documents, by registered mail. The Landlord's agent provided the tracking number for the documents. The Landlord's agent testified that the documents were returned to the Landlord a few days ago, unclaimed.

The tenancy started on May 1, 2008. Monthly rent is currently \$1,150.00 per month, due the first day of each month. The Tenants paid a security deposit in the amount of \$575.00 and a pet deposit in the amount of \$575.00 on April 28, 2009.

The Tenants may have abandoned the rental unit, but the Landlord's agent is unsure, and requested an Order of Possession. The Tenants have not returned their keys to the Landlord.

The tenancy agreement provides for a late fee in the amount of \$25.00 for rent not paid on the first of the month. A copy of the tenancy agreement was provided into evidence.

Analysis

I accept the Landlord's agent's testimony that the Tenants were served with the Notice to End Tenancy on July 3, 2009, by posting the Notice on the Tenants' door. Service in this manner is deemed to be effected the 3rd day after posting. Therefore, I find the Tenants were served with the Notice to End Tenancy on July 6, 2009. The Tenants 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 Tenants are conclusively presumed to have accepted that the tenancy ended on July 16, 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 Tenants were mailed the Notice of Hearing documents, by registered mail, on July 22, 2009. Section 90 of the Act deems service in this manner to be effected 5 days after mailing the documents, whether or not the Tenants chose to accept the documents. Despite being deemed served with the Notice of Hearing Documents, the Tenants did not sign into the conference and the Hearing proceeded in their absence.

I accept the Landlord's agent's testimony that the Tenants owe outstanding rent in the amount of \$1,150.00, together with a \$25.00 late fee, for the month of July, 2009. The Landlord is also entitled to loss of rent for the month of August, 2009.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security and pet deposits, together with accrued interest, towards its monetary claim.

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

The Landlord has established a monetary claim as follows:

Unpaid rent and late fee for the month of July, 2009	\$1,175.00
Loss of rent for the month of August, 2009	\$1,150.00
Recovery of the filing fee	\$50.00
Landlord's total monetary claim	\$2,375.00
Less security and pet deposits and \$11.55 accrued interest	-\$1,161.55
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,213.45

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 hereby grant the Landlord a Monetary Order in the amount of \$1,213.45 against the Tenants. This Order must be served on the Tenants 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 9, 2009