



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

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 and loss of rent, to keep the security deposit paid by the Tenants; 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 parties 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:

The Tenancy started on March 15, 2009. Monthly rent is \$900.00 per month, due the first day of each month. The Tenants paid a security deposit in the amount of \$450.00 on March 5, 2009.

On June 3, 2009, at approximately 3:00 p.m., the Landlord's agent served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenants' door at the rental unit.

On July 31, 2009, the Landlord's agent mailed both of the Tenants the Notice of Hearing documents, by registered mail, to the Tenants' residential address. The Landlord's agent provided a copy of the registered mail receipts and tracking numbers.

The Landlords testified that the Tenants had paid some of the money due to the Landlords, but the Landlord did not reinstate the tenancy. The Landlord's agent requested a monetary order, as follows:

Loss of rent for July, 2009	\$600.00
Loss of rent for August, 2009	\$900.00
Loss of rent for September, 2009	\$900.00
Late fees	<u>\$50.00</u>
TOTAL AMOUNT CLAIMED	\$2,450.00

The Tenant gave the following testimony:

The Tenant concurred with the Landlord's agent's testimony. He stated that he had been unemployed, but was working again as at September 14, 2009.

Analysis

Based on the testimony of both parties, I accept that the Landlord served the Tenants with the Notice to End Tenancy by posting the Notice on the Tenants' door on June 3, 2009. Pursuant to Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenants did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on June 16, 2009. The Landlord is entitled to an Order of Possession and I make that Order.

The Landlord's agent applied for late fees in the amount of \$50.00. There is a clause in the tenancy agreement which allows for a \$25.00 fee for late payment of rent.

However, the Tenancy ended on June 16, 2009, and therefore the Landlord is only entitled to late fees for June, 2009, in the amount \$25.00.

Based on the testimony of both parties, the Landlord's agent has established a monetary claim for loss of rent for the months of July, August and September, in the total amount of \$2,400.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

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:

Loss of rent for the months of July, August and September, 2009	\$2,400.00
Late fees for the month of June, 2009	\$25.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,475.00
Less security deposit	<u>- \$450.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$2,025.00

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 \$2,025.00 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 17, 2009