

**Dispute Codes:** OPR, MNR, MNSD, MNDC, 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; and to recover the cost of the filing fee from the Tenants.

I reviewed the evidence provided prior to the Hearing. The Landlord's agent 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 testified that she served the Tenants with the Notice to End Tenancy at 4:15 p.m. on August 5, 2009, by posting the Notice on the Tenants' door at the rental unit.

The Landlord's agent testified that she personally served the Tenants with the Notice of Hearing documents on August 30, 2009, at the rental unit.

The Landlord's agent testified that the Tenants were seen moving some of their possessions out of the rental unit, but she is unsure whether they have vacated the premises.

The Landlord's agent testified that the Tenants have not paid any of the outstanding rent for the month of August. Rent is \$957.00 per month. The Landlord's agent testified that the Tenants paid a security deposit in the amount of \$100.00 on June 15, 2005. The Landlord's agent requested a monetary order for outstanding rent for August, together with a \$25.00 late fee, and loss of rent for the months of September and October. The Landlord's agent testified that the Tenants were provided with a Notice of Rent Increase, which came into effect on October 1, 2009.

## **Analysis**

I am satisfied on the affirmed testimony of the Landlord's agent that the Tenants were duly served with the 10 Day Notice to End Tenancy on August 5, 2009, by posting the Notice to the Tenants' door. Service in this manner is deemed to have been effected three days after posting the Notice. Therefore, the effective date of the end of tenancy was August 18, 2009.

The Tenants did not file an application to dispute the Notice to End Tenancy, nor did they pay the outstanding rent, within 5 days of receiving the Notice to End Tenancy. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on August 18, 2009. The Landlord is entitled to an Order of Possession, and I make that Order.

I am satisfied on the affirmed testimony of the Landlord's agent that the Tenants were personally served with the Notice of Hearing documents on August 30, 2009. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the conference and the Hearing proceeded in their absence.

The Landlord applied for late fees in the amount of \$25.00, for the month of August, 2009. These fees can be recovered if the tenancy agreement contains a clause providing for these fees. The Landlord did not provide a copy of the tenancy agreement in evidence and therefore this portion of its application is dismissed without leave to reapply.

The Landlord has established its claim for unpaid rent for August, 2009, in the amount of \$957.00. The Landlord applied for loss of rent for the months of September and October, 2009. The Landlord's agent testified that the Tenants were served with a Notice of Rent Increase that took effective on October 1, 2009. The Landlord did not supply a copy of the Notice of Rent Increase, and therefore I find that the Landlord has established its claim for loss of rent for the months of September and October, in the amount of \$957.00 per month only.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit, together with accrued interest, in partial satisfaction of its monetary claim.

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

The Landlord has established a monetary claim as follows:

Unpaid rent for August, 2009	\$957.00
Loss of rent for September, 2009	\$957.00
Loss of rent for October, 2009	\$957.00
Recovery of the filing fee	\$50.00
SUBTOTAL	\$2,921.00
Less security deposit and accrued interest of \$3.54	-\$103.54
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET OFF	\$2,817.46

### **Conclusion**

I hereby grant the Landlord an Order of Possession effective **2 days after service upon 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 \$2,817.46. 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: October 16, 2009.

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