

DECISION

Dispute Codes: OPR, MNDC, MNR, MNSD, FF

Introduction

This is the Landlord's application for an Order of Possession for unpaid rent; 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 Tenant.

I reviewed the evidence provided prior to the Hearing. The Landlord's agents 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 keep the security deposit paid by the Tenant?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The Landlord's agents gave the following testimony:

- The Landlord's agent SO served the Tenant with the Notice to End Tenancy on September 3, 2009, by posting the Notice on the Tenant's door at the rental unit.
- The Landlord' agent AB mailed the Notice of Hearing documents to the Tenant, by registered mail, on September 20, 2009. The Landlord's agent provided the tracking number for the registered mail documents.
- The tenancy agreement is a one year term lease, commencing March 1, 2008 and ending February 28, 2009. At the end of the term, it continued on a month to month basis. Current monthly rent is \$797.00 per month, due on the first day of each month.
- The Tenant owes rent in the amount of \$182.00 from August, 2009 and \$797.00 from September 1, 2009.
- On September 4, 2009, the Tenant made a partial payment towards the outstanding arrears in the amount of \$160.00. The Landlord did not reinstate

the tenancy. A further payment of \$450.00 was paid, but the cheque came back "insufficient funds".

Analysis

I am satisfied on the affirmed testimony of the Landlord's agent that the Tenant was duly served with the Notice to End Tenancy on September 3, 2009, by posting the Notice to the Tenant's 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 September 16, 2009.

The Tenant did not file an application to dispute the Notice to End Tenancy, nor did she pay the outstanding rent, within 5 days of receiving the Notice to End Tenancy. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on September 16, 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 Tenant was mailed the Notice of Hearing documents, by registered mail, on September 20, 2009. Service in this manner is deemed to have been effected five 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 her absence.

The Landlord applied for late fees and NSF fees, each in the amount of \$25.00, for the month of September. 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 and September, in the amount of \$979.00. The Landlord applied for loss of rent for the months of October and November, 2009. It is premature to allow loss of rent for the whole month of October, as the Landlord may re-rent the suite prior to the end of October. I allow the Landlord a

prorated amount of \$257.10 for October 1 to October 10, 2009 ($\$797.00 / 31 = \25.71 per day). The Landlord is at liberty to apply for the amount of October's rent then owing, if the rental unit is not re-rented before the end of the month. The Landlord's application for loss of rent for the month of November is dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit 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 Tenant.

The Landlord has established a monetary claim as follows:

Unpaid rent for August, 2009	\$182.00
Unpaid rent for September, 2009	\$797.00
Prorated loss of rent for October 1 to 10, 2009	\$257.10
Recovery of the filing fee	\$50.00
SUBTOTAL	\$1,286.10
Less security deposit and accrued interest of \$3.97	-\$302.97
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET OFF	\$983.13

Conclusion

I hereby grant the Landlord an Order of Possession effective **2 days after service upon 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 \$983.13. 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: October 2, 2009.
