

DECISION

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

Introduction

This is the Landlords' 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 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 keep the security deposit paid by the Tenants?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenants?

Background and Evidence

The Landlord's agents gave the following testimony:

- The Landlord's agent served the Tenants with the Notice to End Tenancy on September 11, 2009, at 3:04 p.m. by handing the Notice to one of the Tenants at the rental unit.
- The Landlord's agent mailed the Notice of Hearing documents to each of the Tenants, by registered mail, on September 18, 2009. The Landlord's agent provided the tracking numbers for the registered mail documents.
- The tenancy commenced on July 1, 2009. Monthly rent is \$800.00 per month, due on the first day of each month. The Tenants paid a security deposit in the amount of \$400.00 in July, 2009.
- The Tenants owe rent in the amount of \$800.00 for September 1, 2009.
- The Landlords applied for loss of rent for the months of October and November, 2009.

Analysis

I am satisfied on the affirmed testimony of the Landlord's agent that the Tenants were duly served with the Notice to End Tenancy on September 11, 2009. Therefore, the effective date of the end of tenancy was September 21, 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 September 21, 2009. The Landlords are 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 mailed the Notice of Hearing documents, by registered mail, on September 18, 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 Tenants did not sign into the conference and the Hearing proceeded in their absence.

The Landlords have established its claim for unpaid rent for September, in the amount of \$800.00. The Landlords 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 Landlords may re-rent the suite prior to the end of October. I allow the Landlords a prorated amount of \$387.15 for October 1 to October 15, 2009 ($\$800.00 / 31 = \25.81 per day). The Landlords are 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 Landlords' application for loss of rent for the month of November is dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit in partial satisfaction of their monetary claim. No interest has accrued on the security deposit.

The Landlords have been successful in their application and are entitled to recover the cost of the filing fee from the Tenants.

The Landlords have established a monetary claim as follows:

Unpaid rent for September, 2009	\$800.00
Prorated loss of rent for October 1 to 15, 2009	\$387.15
Recovery of the filing fee	\$50.00
SUBTOTAL	\$1,237.15
Less security deposit	<u>-\$400.00</u>
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET OFF	\$837.15

Conclusion

I hereby grant the Landlords 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 Landlords a Monetary Order in the amount of \$837.15. 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 5, 2009.
