

Decision

Dispute Codes:

OPR; MNR; MNSD; MNDC

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent, and to apply the security deposit paid by the Tenant towards his monetary claim.

I reviewed the evidence provided by the Landlord 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?

Background and Evidence

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

The Tenancy started on April 15, 2009. Monthly rent is \$500.00 per month, due the first day of each month. The Tenants paid a security deposit in the amount of \$250.00 on April 15, 2009.

On September 24, 2009, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, by posting the Notice on the Tenant's door at the rental unit.

On October 9, 2009, the Landlord's agent mailed the Tenant the Notice of Hearing documents, by registered mail, to the Tenant's residential address. The Landlord's

agent provided a copy of the registered mail receipts and tracking numbers and testified that an on-line search confirmed the Tenant received the documents.

The Landlord's agent requested a monetary order, as follows:

Unpaid rent for September, 2009	\$500.00
Unpaid utilities as at August 21, 2009	\$200.00
Loss of rent for October, 2009	\$500.00
Loss of rent for November, 2009	<u>\$500.00</u>
TOTAL AMOUNT CLAIMED	\$1,700.00

Analysis

I accept that the Landlord's agent served the Tenant with the Notice to Hearing documents by registered mail. Pursuant to Section 90 of the Act, service in this manner is deemed to be effected five days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

I accept that the Landlord's agent served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on September 24, 2009. Pursuant to Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant 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 Tenant is conclusively presumed to have accepted that the tenancy ended on October 7, 2009. The Landlord is entitled to an Order of Possession and I make that Order.

Section 46(6) of the Act provides that a landlord may treat unpaid utilities as unpaid rent if the tenancy agreement requires the tenant to pay utility charges to the landlord, and if the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them. In this case, the tenancy agreement does provide that

the Tenant pay utilities however, the Landlord did not give the Tenant written demand for payment. Therefore, the Landlord's application with respect to utilities as noted on the Notice to End Tenancy is dismissed.

The Landlord's agent has established a monetary claim for unpaid rent for September and for loss of rent for the months of October and November, in the total amount of \$1,500.00.

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 established a monetary claim as follows:

Unpaid rent for September, 2009	\$500.00
Loss of rent for the months of October and November, 2009	\$1,000.00
Subtotal	\$1,500.00
Less security deposit	- \$250.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,250.00

Conclusion

I hereby grant the Landlord an Order of Possession effective two days from service on 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 \$1,250.00 against the Tenant. 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: November 18, 2009