



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

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

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent; to apply the security deposit towards the Landlord's monetary claim; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord's agents gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Is the Landlord entitled to an Order of Possession?
- (2) Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- (3) Is the Landlord entitled to recover the filing fee from the Tenant?

Background and Evidence

The tenancy started on July 6, 2009. A copy of the Tenancy Agreement was entered in evidence. Monthly rent is \$1,150.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$575.00 on July 3, 2009.

Landlord's agents' testimony

The Landlord's agent NK testified that she personally served the Tenant with the Notice to End Tenancy for Unpaid Rent or Utilities at the Tenant's residence on October 2, 2009, at approximately 2:30 p.m.

The Landlord's agent DS testified that she personally served the Tenant with the Notice of Hearing documents at the Landlord's office on October 16, 2009.

The Landlord's agent DS testified that:

- The Tenant remains in the rental unit.
- On October 16, 2009, the Tenant paid the Landlord the amount of \$1,150.00. The Landlord's agent issued the Tenant a receipt for "use and occupancy only" and explained to the Tenant that she was not reinstating the tenancy.
- On November 1, 2009, the Tenant paid the Landlord the amount of \$1,150.00, by cheque. The cheque was returned "NSF". On November 9, 2009, the Tenant paid the Landlord the amount of \$1,150.00. The Landlord's agent issued the Tenant a receipt for "use and occupancy only" and explained to the Tenant that she was not reinstating the tenancy.
- The Landlord's agent asked for an Order of Possession and to recover the filing fee for the cost of the application from the Tenant.

Analysis

I accept the Landlord's agent's testimony that the Tenant was duly served with the Notice to End Tenancy. The Tenant did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy.

Pursuant to Section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. In this case, service was affected on October 2, 2009, and the effective end to the tenancy was

therefore October 12, 2009. Therefore, the Landlord is entitled to an immediate Order of Possession and I make that order.

I accept the Landlord's agent's testimony that she personally served the Tenant with the Notice of Hearing Package and Application for Dispute Resolution on October 16, 2009. In spite of being served with the document, the Tenant did not appear at today's Hearing and the Hearing proceeded in his absence.

The Landlord has been paid for use and occupancy only for the months of October and November and therefore its application for unpaid rent for October and loss of rent for November is dismissed without leave to reapply. It is premature to allow the Landlord's claim for loss of rent for the month of December, 2009, and therefore I dismiss this portion of the Landlord's claim, with leave to re-apply.

The Landlord has been largely successful in its application and is entitled to recover the filing fee in the amount of \$50.00 from the Tenant.

Pursuant to Section 72 of the Act, the Landlord may deduct the security deposit, together with any accrued interest, in partial satisfaction of its monetary claim.

Conclusion

The Landlord's application for unpaid rent for October and loss of rent for the month of November, 2009, is dismissed. The Landlord's application for unpaid rent for December, 2009, is dismissed with leave to re-apply.

The Landlord may deduct \$50.00 from the security deposit paid by the Tenant.

Under Section 55 of the Act, I grant the Landlord an Order of Possession **effective two days from service of the order**. 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.

December 1, 2009

Date of Decision