

Decision

Dispute Codes: OPR, MNSD, MNR, FF

Introduction

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

This matter was reconvened from a Direct Request Proceeding, in order to establish that the Tenant was in fact a tenant, as the tenancy agreement provided in evidence was not signed by the Tenant.

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

Preliminary Matter

The Tenant is the widow of a tenant who is party to the written tenancy agreement. The Tenant's spouse passed away, and the Tenant remains in the rental unit.

The Landlord provided a copy of a letter from the deceased tenant's father, dated August 19, 2009, asking the Landlord to transfer the security deposit to the Tenant's name.

I am satisfied that the Tenant is a tenant and this matter can proceed.

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?

(4) Is the Landlord entitled to apply the security deposit towards unpaid rent?

Background and Evidence

Landlord's agent's (the "Agent") testimony

The Agent testified that another agent of the Landlord served the Tenant with the Notice to End Tenancy by posting it to the door of the rental unit on October 14, 2009 at 9:00 a.m. The Landlord provided a Proof of Service document in evidence, which was signed by the other agent and a witness.

The Agent testified that the Application for Dispute Resolution and Hearing package was mailed to the Tenant, by registered mail, on November 18, 2009. The Agent provided the tracking number for the registered mail document. A search of the Canada Post website confirms that the Tenant received the documents on November 23, 2009.

The Agent testified that:

- The tenancy started on June 1, 2006. There is a written tenancy agreement, which was provided in evidence. The monthly rent is currently \$690.00, due on the first day of the month. A security deposit in the amount of \$322.50 was paid to the Landlord on June 1, 2006.
- The Tenant remains in the rental unit.
- The Tenant is in arrears of \$140.00 for the September's rent and has not paid any rent for the months of October through to December, 2009, inclusive.

Analysis

I accept that the Tenant was duly served with the Notice to End Tenancy. Service in this manner is deemed to be effected 3 days after posting the document. Therefore, the Tenant is deemed to have been served with the Notice to End Tenancy on October 17,

2009. 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, the effective end to the tenancy was October 27, 2009.

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

I accept that the Tenant was served with the Notice of Hearing Package and Application for Dispute Resolution, on November 23, 2009. In spite of being served with the documents, the Tenant did not appear at today's Hearing and the Hearing proceeded in his absence.

Based on the undisputed testimony of the Landlord, and the absence of any evidence to the contrary from the Tenant, the Landlord has established its claim, as follows:

Unpaid rent for September, 2009	\$140.00
Rent for October, 2009	\$690.00
Loss of rent for November, 2009	\$690.00
Loss of rent for December, 2009	<u>\$690.00</u>
TOTAL:	\$2,210.00

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit, together with accrued interest, in partial satisfaction of its monetary claim. Interest has accrued on the security deposit in the amount of \$10.74.

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

The Landlord has established a monetary order, as follows:

Rent arrears and loss of rent	\$2,210.00
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Recovery of the filing fee	\$50.00
Less security deposit and interest	<u><\$333.24></u>
TOTAL amount due to Landlord after set off	\$1,926.76
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Conclusion

Pursuant to 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.

Pursuant to Section 67 of the Act, I hereby grant the Landlord a Monetary Order in the amount of \$1,926.76 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.

December 17, 2009

Date of Decision
