Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

<u>Dispute Codes</u>   OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The landlord also requested retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord provided evidence that the tenant was served with notification of the hearing and the landlord's evidence via registered mail sent to the rental unit address on December 24, 2009. The landlord confirmed that the tenant is still residing in the rental unit. I was satisfied the tenant has been deemed to be served with the registered mail five days after mailing and I proceeded to hear from the landlords without the tenant present.

Issues(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent?
3. Retention of the security deposit.
4. Award of the filing fee.

Background

Upon hearing undisputed testimony of landlord, I make the following findings concerning the tenancy. The tenancy began July 13, 2009 and the tenant paid a $187.50 security deposit at the commencement of the tenancy. The tenant is required to pay rent of $375.00 on the 1st day of every month. The tenant failed to pay rent for the months of

August, September and October 2009. The tenant paid rent for the months of November and December 2009. On December 17, 2009 the tenant was personally served with a *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* (the Notice). The Notice has an effective date of December 27, 2009 and indicates rent of $1,125.00 was outstanding. The tenant did not dispute the Notice or pay the outstanding rent.

The landlord stated that several meetings have been set up with the tenant to discuss a payment plan but the tenant fails to appear for the meetings.

As evidence for the hearing the landlord provided a copy of the registered mail receipt for service of the hearing documents and the Notice to End Tenancy.

Analysis

Where a tenant is served with a Notice for unpaid rent, the tenant has five days to either pay the outstanding rent or dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date. In this case, I accept that the tenant was served with the Notice on December 17, 2009 and the tenant did not dispute the Notice or pay the outstanding rent within five days. Therefore, I find this tenancy ended as of December 17, 2009 and since the tenant continues to reside in the rental unit, the landlord is entitled to an Order of Possession.

I provide the landlord with an Order of Possession effective two days after service upon the tenant. The landlord may file the Order of Possession with the Supreme Court of British Columbia to enforce as an Order of that court.

I am satisfied that the tenant failed to pay rent in the amount of $1,125.00 and I authorize the landlord to retain the security deposit in partial satisfaction of that amount. I also award the landlord the filing fee paid for this application.

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – August, September, October 2009	$ 1,125.00
Filing fee	50.00
Less: security deposit	(187.50)
Monetary Order	$ 987.50

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is provided with an Order of Possession effective two days after service upon the tenant. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed and the landlord has been provided a Monetary Order for the balance of $987.50 to serve upon the tenant.

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: January 29, 2010.

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Dispute Resolution Officer