

Decision

Dispute Codes: OPR, MNSD, MNR,

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent for the months of November, December and January; and to apply the security deposit towards its monetary award.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Tenant did not provide any evidence. The Landlord's agent and witness gave affirmed testimony 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?

Background and Evidence

Landlord's agent's and witness's testimony

The Landlord's agent testified that he served the Tenant with the Notice to End Tenancy at the rental unit on December 4, 2009 at 8:25 p.m. by posting the Notice on the Tenant's door. The Landlord provided a Proof of Service document in evidence, which was signed by a witness.

The Landlord's agent testified that he personally served the Tenant with the Application for Dispute Resolution filed December 14, 2009 on December 14, 2009.

The Landlord's witness testified that she was present when the Landlord's agent served the Tenant with the Notice of Hearing documents at the rental unit on December 14, 2009, at approximately 8:30 p.m.

A copy of the tenancy agreement was entered in evidence. Rent is \$617.00 per month due on the first day of the month. The Landlord received a security deposit in the amount of \$307.00 from the Tenant on July 22, 2009. The tenancy agreement includes a clause indicating late fees in the amount of \$25.00 would be charged for late payment of rent.

The Landlord's agent testified that the Tenant has not paid rent for the months of November and December 2009 and January 2010.

:Analysis

Based on the testimony of the Landlord's agent and witness, I am satisfied that the Tenant was served with the Notice of Hearing documents in accordance with the provisions of Section 89 of the Act. Despite being served with the documents, the Tenant did not sign into the conference and the matter proceeded in his absence.

I accept the Landlord's agent's testimony and documentary evidence that the Tenant was duly served with the Notice to End Tenancy on December 4, 2009, by posting the Notice on the Tenant's door. Service in this manner is deemed to be effected 3 days from posting, on December 7, 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 the provisions of Section 46(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 December 17, 2009.

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

Based on the undisputed testimony of the Landlord's agent and the absence of any testimony or evidence to the contrary from the Tenant, the Landlord has established a monetary claim for unpaid rent for November and December, 2009 and loss of rent for the month of January, 2010. The Landlord is also entitled to late fees for the months of November and December, 2009. The Tenancy ended on December 17, 2009, and therefore late fees are not recoverable for the month of January, 2010.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may retain the security deposit towards partial satisfaction of its monetary claim. No interest has accrued on the security deposit.

I provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent for November and December, 2009	\$1,234.00
Loss of rent for January, 2010	\$617.00
Late fees for November and December, 2009	\$50.00
Less security deposit	<u>-\$307.00</u>
TOTAL after set-off	\$1,594.00

Conclusion

I grant the Landlord an Order of Possession **effective two days from service of the Order**. 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 Landlord a Monetary Order in the amount of \$1,594.00 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.

January 22, 2010

Date of Decision
