

Decision

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

Introduction

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

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord 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 for unpaid rent and late fees, and if so, in what amount?
- (3) Is the Landlord entitled to apply the security deposit in partial satisfaction of his monetary award?

Background and Evidence

Landlord's testimony

The Landlord testified that he personally served the Tenant JR with the Notice to End Tenancy at the rental unit on October 14, 2009, between 10:30 and 11:30 a.m.

The Landlord testified that he personally served the Tenant JSM with the Application for Dispute Resolution and hearing package at the rental unit on December 29, 2009, between 10:30 and 11:30 a.m.

The Landlord testified that:

- There is a written tenancy agreement. The tenancy started on April 1, 2008, 2008. The monthly rent is \$725.00, due on the first day of the month. The Tenants paid a security deposit to the Landlord in the amount of \$362.50 on March 30, 2008.
- The Tenants remain in the rental unit.
- The Tenants started falling behind in rent payments in April, 2009, but had an agreement with the Landlord with respect to how they would catch up with the unpaid rent.
- The Tenants did not make all promised payments to the Landlord, contrary to the agreement, and the Landlord issued the Notice to End Tenancy.
- On January 14, 2010, the Tenants paid \$1,125.00 towards their rent arrears. The Landlord explained that he was not reinstating the tenancy, but was accepting the payment for use and occupancy only.
- The Tenants currently owe the Landlord \$2,050.00 in unpaid rent and \$75.00 for late fees.

Analysis

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the Landlord serve each of the Tenants as set out under Section 89(1). I am satisfied that the Landlord served the Tenant JSM in accordance with the provisions of Section 89(1)(a) of the Act. The Tenant JR was not served with the Notice of Hearing document, and therefore I make no Orders with respect to the Tenant JR.

I am satisfied that the Landlord served the Tenants with the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to the provisions of Section 88 of the Act. The Tenants did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days of being deemed served with the Notice. The Notice states that the

Tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. In this case, the effective end of tenancy is October 28, 2009.

Based on the undisputed testimony of the Landlord, I find that the Tenant JSM has been duly served with the Notice of Hearing documents for the purposes of an application under Section 55 for an Order of Possession and Section 67 for a Monetary Order.

The Landlord applied for a monetary order to include three late fees of \$25.00 each. The Act allows for late fees, but only if there is a clause in the tenancy agreement providing for late fees. The Landlord did not provide a copy of the tenancy agreement in evidence, and therefore this portion of his application is dismissed.

Order of Possession - Further to Section 46(5) of the Act, I find that the Tenants were conclusively presumed to have accepted that the tenancy ended on October 28, 2009, 10 days after service was affected. The Landlord is entitled to an Order of Possession and I make that Order.

Monetary Order – I allow the Landlord's monetary claim in the amount of \$2,050.00. Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit, together with accrued interest, towards partial satisfaction of his monetary claim. The Landlord has been successful in his application and is entitled to recover the cost of the filing fee.

The Landlord has established a Monetary Order, as follows:

Unpaid Rent	\$2,050.00
Filing fee	\$50.00
Subtotal	\$2,100.00
Less set-off of security deposit and accrued interest of \$4.12	-\$366.62
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,733.38

Conclusion

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 JSM 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 \$1,733.38 against the Tenant JSM. This Order must be served on the Tenant JSM and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

February 4, 2010

Date of Decision