



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent, and a Monetary Order for unpaid rent, damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit, and recovery of the filing fee. The tenants did not appear at the hearing. The landlord testified that the tenants were served with notice of the hearing by personal service on January 15, 2010. Based upon the landlord's testimony, I was satisfied the tenants were adequately served with the notice of hearing in accordance with the requirements of the Act and the hearing proceeded without the tenants present.

Issues

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?
3. Retention of the security deposit.
4. Award of the filing fee.

Background

The landlord testified and provided documentary evidence as follows. The one year fixed term tenancy began September 1, 2009. The monthly rent of \$850.00 and \$20.00 for parking is due on the 1st day of every month. The tenancy agreement provides for a \$20.00 late fee. A security deposit of \$425.00 had been paid on August 30, 2009. The tenants were issued a *10 Day Notice to End Tenancy for Unpaid Rent* on January 2, 2010 indicating rent of \$890.00 was outstanding and an effective vacancy date of January 13, 2010. The landlord testified that the Notice was posted on the tenants'

door on January 2, 2010 in the presence of a witness and that witness signed a proof of service document affirming the document was posted. The tenants paid the outstanding rent on February 1, 2010 and the landlord issued a receipt for "use and occupancy only". The tenants continue to reside in the rental unit.

During the hearing, the landlord amended his monetary claim to seek a reduced Monetary Order comprised of loss of rent and parking for February 2010 plus a late fee for February 2010.

Analysis

Where a tenant receives a 10 Day Notice the tenant must pay the outstanding rent or dispute the Notice within five days of receiving the Notice. Otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end and the tenant will have to vacate the rental unit by the effective date.

Upon review of the evidence before me, I am satisfied that the tenants were issued a 10 Day Notice on January 2, 2010 and since it was posted it is deemed to be served upon the tenants three days later on January 5, 2010. Therefore, the effective date should read January 15, 2010 and it is automatically changed pursuant to section 53 of the Act.

Since the tenants did not pay the outstanding rent or dispute the Notice by January 10, 2010 I find the tenancy ended on January 15, 2010 and I am satisfied the landlord did not reinstate the tenancy when the tenants paid the outstanding rent for January 2009. Since the tenants continue to reside in the rental unit, I find the landlord entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two days after service upon the tenants. The Order of Possession may be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover loss of rent and parking in the amount of \$870.00 for the month of February 2010. I do not award the late fee for

February 2010 as the tenancy ended in January 2010 and the requirement to pay the late fee was part of the tenancy agreement.

As the landlord was largely successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenants' security deposit in partial satisfaction of the amount awarded to the landlord. I provide for the landlord with this decision a Monetary Order calculated as follows:

Loss of rent and parking – February 2010	\$ 870.00
Filing fee	50.00
Less: security deposit	<u>(425.00)</u>
Monetary Order	<u>\$ 495.00</u>

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 provided an Order of Possession effective two (2) days after service upon the tenants.

The landlord is authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$495.00 to serve upon the tenants.

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: February 26, 2010.

Dispute Resolution Officer