

Decision

Dispute Codes:

OPR; MNR; MNDC, MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent, to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

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

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

Monthly rent is \$715.00 per month, due the first day of each month. The Tenant paid a security deposit in the amount of \$357.50, as follows: \$300.00 was paid on June 16, 2009; and \$57.50 was paid on July 2, 2009.

On January 6, 2010, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenant's door at the rental unit.

On July 31, 2009, the Landlord's agent mailed both of the Tenants the Notice of Hearing documents, by registered mail, to the Tenants' residential address. The Landlord's agent provided a copy of the registered mail receipts and tracking numbers.

The Landlord's agent testified that the Tenant has paid some of the money due to the Landlord, but the Landlord did not reinstate the tenancy, and provided the Tenant with a receipt for "use and occupancy only". The Landlord's agent requested a monetary order for unpaid rent and loss of rent, as follows:

Unpaid rent for January, 2010	\$600.00
Loss of rent for February, 2010	\$415.00
Loss of rent for March, 2010	<u>\$540.00</u>
TOTAL AMOUNT CLAIMED	\$1,020.00

The Landlord's agent stated that the Tenant had dropped his keys down the elevator shaft and asked to recover the cost of key retrieval in the amount of \$129.68.

The Tenant gave the following testimony:

The Tenant concurred with the Landlord's agent's testimony. He requested more time to move out of the rental unit.

The Landlord's agent agreed to extend the date of possession of the rental unit until April 15, 2010 at 1:00 p.m.

Analysis

Based on the testimony of both parties, I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on January 6, 2010. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay

the arrears, or file for dispute resolution, within 5 days of receiving the documents.

Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on January 19, 2010. The Landlord is entitled to an Order of Possession and I make that Order. The Landlord's agent asked that the Order be effective April 15, 2010.

The Landlord's agent asked to recover the cost of the key retrieval from the Tenant, however this was not claimed on the Application for Dispute Resolution filed February 9, 2010. Therefore, I will not make an order with respect to this matter. The Landlord is at liberty to make application to recover this cost, should it choose to do so.

Based on the testimony of both parties, the Landlord's agent has established a monetary claim for unpaid rent and loss of rent for the months of January, February and March, 2010, in the total amount of \$1,020.00.

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

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

The Landlord has established a monetary claim as follows:

Un paid rent and loss of rent	\$1,020.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,070.00
Less security deposit	<u>- \$357.50</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$712.50

Conclusion

I hereby grant the Landlord an Order of Possession effective 1:00 p.m., April 15, 2010. 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.

I hereby grant the Landlord a Monetary Order in the amount of \$712.50 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.

Dated: March 29, 2010