

Decision

Dispute Codes: OPR, MNSD, MNR, FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; to apply the security deposit towards its monetary award, 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 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, and if so, in what amount?
- (3) Is the Landlord entitled to recover the filing fee from the Tenant?
- (4) Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

This matter was adjourned from a direct request proceeding to a participatory hearing, in order that the Landlord could prove service of the Notice of Hearing documents on the Tenant.

Landlord's testimony

The Landlord testified that the Notice to End Tenancy issued March 3, 2010, was posted to the Tenant's door at the rental unit on March 3, 2010 at 7:00 p.m. The Landlord provided a Proof of Service document in evidence, which was signed by the Landlord and a witness.

The Landlord's agent testified that she mailed the Application for Dispute Resolution; interim decision of April 19, 2010; and hearing package, by registered mail, to the Tenant at the rental unit. The Landlord's agent provided a tracking number for the registered mail package. A search of the Canada Post website indicates the documents were mailed on April 27, 2010, and were returned to the Landlord, as unclaimed by the Tenant.

The tenancy began on January 23, 2010. A copy of the tenancy agreement was entered in evidence. The Tenant paid pro-rated rent for January, 2010, in the amount of \$160.00, together with a security deposit in the amount of \$275.00, on January 23, 2010. The Tenant has not paid any rent since January 23, 2010. Monthly rent is \$550.00, due on the first day of each month. The Tenant remains in the rental unit.

Analysis

I accept the Landlord's agent's testimony that she mailed the Tenant the Notice of Hearing Package, Interim Decision, and Application for Dispute Resolution, by registered mail on April 27, 2010. Documents served in this manner are deemed to be received on the fifth day after mailing the documents, regardless of whether the Tenant chose to accept delivery of the documents. In spite of being served with the documents, the Tenant did not appear at today's Hearing and the Hearing 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. Service by posting the Notice on the Tenant's door is deemed effected on the third day after posting the Notice. 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 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 March 16, 2010.

Therefore, the Landlord is entitled to an Order of Possession and I make that order **effective 2 days after service of the Order upon the Tenant.**

Based on the undisputed testimony of the Landlord's agent, and the absence of any evidence to the contrary from the Tenant, the Landlord has established its claim, as follows:

Rent for February, 2010	\$550.00
Rent for March, 2010	\$550.00
Loss of rent for April, 2010	\$550.00
Loss of rent for May, 2010	\$550.00
Loss of rent for June, 2010	<u>\$550.00</u>
TOTAL:	\$2,750.00

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of its monetary claim. No interest has accrued on the security deposit.

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

I hereby provide the Landlord with a monetary order against the Tenant, calculated as follows:

Rent arrears and loss of rent	\$2,750.00
Recovery of the filing fee	\$50.00
Less security deposit	<u><\$275.00></u>

TOTAL amount due to Landlord after set off	\$2,525.00
	=====

Conclusion

Under the provisions of Section 55 of the Act, I grant the Landlord an Order of Possession **effective two days from service of the Order upon the Tenant**. 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.

Pursuant to Section 67 of the Act, I hereby grant the Landlord a Monetary Order in the amount of \$2,525.00 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.

June 7, 2010

Date of Decision
