

DECISION

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

Introduction

This is the Landlords' 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 their monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents were mailed to the Tenant, via registered mail, to the rental unit on September 17, 2010. The Landlord provided a copy of the registered mail receipt and tracking number in evidence.

Based on the affirmed testimony of the Landlord and the documentary evidence provided by the Landlord, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

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 gave the following testimony and evidence:

Monthly rent is \$675.00 per month, due the first day of each month. The Tenant paid a

security deposit in the amount of \$337.50 on July 31, 2010.

On September 2, 2010, the Landlord 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.

The Landlord testified that the Tenant appears to have moved out of the rental unit, but there are still some of her belongings in the rental unit. The Landlord stated that the Tenant "comes and goes". The Landlord requested an Order of Possession.

The Landlord testified that the Tenant has paid some of the money due to the Landlord, in the amount of \$168.75, towards September's rent. The Landlord's agent requested a monetary order for unpaid rent and loss of rent, as follows:

Unpaid rent for September, 2010	\$506.25
Late fees for September	\$25.00
Loss of rent for October, 2010	\$675.00
Late fees for October	<u>\$25.00</u>
TOTAL AMOUNT CLAIMED	\$1,231.25

Analysis

I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on September 2, 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 all of 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 September 15, 2010. The Landlord is entitled to an Order of Possession and I make that Order, effective **two days after service of the Order upon the Tenant.**

A copy of the tenancy agreement was entered in evidence. There is a clause in the tenancy agreement that provides for late fees in the amount of \$25.00, which is within the amount allowed by the regulations. The Landlord is entitled to late fees for September's late rent, but not for loss of rent for the month of October, 2010. The Landlord's agent has established a monetary claim for unpaid rent and loss of rent in the total amount of \$1,206.25.

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 her 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:

Unpaid rent and loss of rent	\$1,206.25
Recovery of the filing fee	\$50.00
Subtotal	\$1,256.25
Less security deposit	- \$375.50
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$918.75

Conclusion

I hereby grant the Landlord an Order of Possession effective **two days after 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.

I hereby grant the Landlord a Monetary Order in the amount of \$918.75 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: October 20, 2010.
