

DECISION

Dispute Codes: OPR, MNSD, MNR, MNDC FF

Introduction

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

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that he served the Tenant with the Notice of Hearing documents by mailing the documents, by registered mail, to the Tenant at the rental unit on October 25, 2010. The Landlord provided a tracking number.

I accept the Landlord's affirmed testimony that he served the Tenant with the Notice of Hearing Package by registered mail. Documents served in this manner are deemed to be received 5 days after mailing the documents. In spite of being served with the documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

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 loss of rent, and late fees?

Background and Evidence

The Landlord testified that he served the Tenant with the Notice to End Tenancy by

mailing the documents, by registered mail, to the Tenant at the rental unit on October 6, 2010. The Landlord provided a copy of the registered mail receipt and Canada Post Tracking printout in evidence.

The Landlord testified that the Tenant fell behind in her rent payments in May, 2010. The Tenant told the Landlord that she was undergoing a marital breakdown and expected to be able to pay the arrears once her Court case was finished. There were delays and the Tenant has made some payments towards outstanding rent and late fees, but not all of the rent has been paid. The Landlord seeks an Order of Possession and Monetary Order.

The Landlord provided a copy of the tenancy agreement in evidence. Monthly rent is \$580.00, due on the first day of each month. There is a clause in the tenancy agreement allowing for late fees. The Tenant paid a security deposit in the amount of \$290.00 on October 5, 2009.

The Landlord testified that the Tenant has made the following late payments towards rent, and the \$25.00 monthly late fee, since May, 2010:

Month	Amount paid	Balance due
May, 2010	\$0	\$605.00
June, 2010	\$100.00	\$505.00
July, 2010	\$100.00	\$505.00
August, 2010	\$100.00	\$505.00
September, 2010	\$305.00	\$300.00
October, 2010	\$605.00	\$0
November, 2010	\$0	<u>\$605.00</u>
Balance of rent and late fees owing		\$3,025.00

The Landlord testified that the Tenant paid late rent in full for the month of October, 2010, and that he provided her with a letter explaining that he accepted the payment for "use and occupancy only". The Landlord provided a copy of the letter, dated October 15, 2010, in evidence.

Analysis

I accept the Landlord's agent's testimony that the Tenant was duly served with the Notice to End Tenancy by registered mail. 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 October 21, 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.**

A Landlord can claim for late fees if there is a clause in the tenancy agreement that allows for late fees. There is a clause in the tenancy agreement that allows for late fees. The amount indicated in the agreement (\$35.00) is more than is allowed by the Regulations, but the Landlord is requesting the maximum amount allowed, \$25.00. I find that the Landlord is entitled to late fees in the amount of \$25.00 per month for late payment of rent. The Landlord is not entitled to late fees for loss of rent for the month of November, 2010. Loss of rent is not the same as unpaid rent. The tenancy ended on October 21, 2010.

Based on the undisputed testimony of the Landlord and the absence of any evidence to the contrary from the Tenant, the Landlord has established his monetary claim in the amount of \$3,000.00.

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

The Landlord sought to be reimbursed for the cost of the registered mail, but these costs are not recoverable. The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order against the Tenant, calculated as follows:

Rent arrears, late fees and loss of rent	\$3,000.00
Recovery of filing fee	\$50.00
Less security deposit	<u><\$290.00></u>
TOTAL amount due to Landlord after set off	\$2,760.00
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Conclusion

I hereby provide 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.

I hereby provide the Landlord a Monetary Order in the amount of **\$2,760.00** 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*.

Dated: November 19, 2010.
