



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, FE

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent and loss of revenue; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that on December 2, 2010, she mailed the Notice of Hearing documents to the Tenant, by registered mail, to the rental unit. The Landlord provided the tracking number and receipt in evidence. She testified that she also served the Tenant by handing copies of the Notice of Hearing documents to the Tenant at the rental unit on December 3, 2010. The Landlord testified that the registered documents were returned to her by the Post Office on December 22, 2010, unclaimed.

Section 90 of the Act deems documents served by registered mail to be received 5 days after mailing the documents, whether or not the party chooses to accept delivery. In any event, I accept the Landlord's agent's affirmed testimony that she personally served the Tenant with the Notice of Hearing Package on December 3, 2010. In spite of being served with the documents, the Tenant did not appear at today's Hearing and the Hearing proceeded in his absence.

Issue(s) to be Decided

- (1) Is the Landlord entitled to a monetary order for unpaid rent for the months of September, October and November, 2010 and loss of revenue for the month of December, 2010?

Background and Evidence

On November 18, 2010, by way of Direct Request Proceeding, the Landlord was granted an Order of Possession for the rental unit. Her application for a Monetary Order

for unpaid rent was dismissed with leave to reapply because she did not serve the Tenant in a manner required in order to obtain a Monetary Order.

The Landlord testified that the Tenant moved out of the rental unit on December 31, 2010.

The tenancy began on September 15, 2009. Monthly rent was \$800.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 at the beginning of the tenancy, which the Landlord is still holding. The Tenant owes partial rent for the month of September, 2010, in the amount of \$100.00. The Tenant has not paid any rent for the months of October, November or December, 2010, and the Landlord seeks a monetary award in the amount of \$2,500.00 for unpaid rent and loss of revenue for the month of December.

The Landlord also seeks to recover fees charged by her bank ($\$42.50 \times 4 = \170.00), as a result of four of the Tenant's rent cheques being returned NSF.

Analysis

A landlord can recover the cost of fees charged by a financial institution for return of a tenant's cheque if the landlord provides proof of those fees. The Landlord did not provide any documentary evidence that she had been charged those fees, and therefore this portion of her application is dismissed.

Based on the undisputed testimony of the Landlord and the absence of any evidence to the contrary from the Tenant, I am satisfied that the Tenant did not pay all of the rent due for the months of September, October and November and that he remained overholding in the rental unit for the month of December, 2010, after an Order of Possession was granted. The Landlord has established her claim, as follows:

Unpaid rent for September, 2010	\$100.00
Unpaid rent for October, 2010	\$800.00

Unpaid rent for November, 2010	\$800.00
Loss of revenue for December, 2010	<u>\$800.00</u>
TOTAL:	\$2,500.00

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of her 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 filing fee from the Tenant.

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

Rent arrears and loss of revenue	\$2,500.00
Recover of filing fee	\$50.00
Less security deposit	<u><\$400.00></u>
TOTAL amount due to Landlord after set off	\$2,150.00
	=====

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$2,150.00** for service upon the Tenant. This Order 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: April 19, 2011.

Residential Tenancy Branch