



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 her monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents were mailed to the Tenant, via registered mail, to the rental unit on May 25, 2011. The Landlord provided the tracking number.

Based on the affirmed testimony of 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 his absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord gave the following testimony:

This tenancy began on November 5, 2009. In 2009, the Tenant paid a security deposit in \$650.00. In 2010, the Tenant paid an additional security deposit in the amount of \$400.00. Monthly rent is \$1,500.00, due on the first day of each month.

The Tenant paid only \$300.00 in rent for the month of April, 2011. The Landlord issued a Notice to End Tenancy for Unpaid Rent and served the Tenant with the Notice on April 24, 2011, by attaching a copy to the door at the rental unit. The Tenant did not pay any rent for May, or for June, 2011.

After the tenancy began, two other people moved into the rental unit with the Tenant. One of those people moved out on May 29, 2011, because he was afraid of the other occupant. The other occupant's name is "Byron". Bryon is causing a lot of damage to the rental unit and has threatened the Landlord with a copper pipe. Byron told the Landlord he was not going to move out unless she gave him \$500.00.

The Tenant moved out of the rental unit, on May 31, 2011. Bryon remains in the rental unit. The Landlord seeks an Order of Possession so she can get vacant possession of the rental unit and make necessary repairs.

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 April 24, 2011. 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 May 4, 2011. The Tenant was overholding until he moved out on May 31, 2011. The Tenant allowed a person into the rental unit who will not leave. I find that the Landlord is entitled to a monetary order against the Tenant for unpaid rent for April in the amount of \$1,200.00 and loss of revenue for May and June, 2011, in the amount of \$3,000.00.

I find that the occupant Bryon is not a tenant of the Landlord's and is trespassing.

I hereby provide the Landlord with an Order of Possession against the Tenant and all

occupants of the upper unit of the rental property, effective two days after posting the Order of Possession to the door of the rental unit. Such service will be sufficient upon the Tenant, pursuant to the provisions of Section 71 of the Act.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award. 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 for April and loss of rent for May, 2011	\$4,200.00
Subtotal	\$4,250.00
Less security deposit	- \$1,050.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$3,200.00

Conclusion

I hereby grant the Landlord an Order of Possession **effective 2 days after posting the Order on the door of the rental unit**. This Order 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 **\$3,200.00** 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: June 15, 2011.

Residential Tenancy Branch