



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 mailed the Notice of Hearing documents to the Tenant on April 6, 2011, by registered mail, to the rental unit. The Landlord provided the tracking number for the registered mail documents. The Landlord advised that the documents were returned to him yesterday, unclaimed. The Landlord testified that hydro was cut off at the rental unit on April 12, 2011, and that the Tenant was at the rental unit on the April 18 and 20, 2011 and on May 1, 2011. The Landlord stated that the Tenant told him that she was not going to attend the Hearing. The Landlord stated that the Tenant told him that she would be getting a U Haul to remove the remainder of her belongings and that she would call the police if he attempted to gain entry to the rental unit.

I accept the Landlord's agent's affirmed testimony that the Tenant was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Service of documents in this manner is deemed to be effected 5 days after mailing the documents, regardless of whether the Tenant chooses to accept delivery. In spite of being served with the documents, the Tenant did not appear at today's Hearing 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 for the months of December, 2010, January and March, 2011 and loss of rent for the months of April and May, 2011?

Background and Evidence

The Landlord testified that he personally served the Notice to End Tenancy issued March 12, 2011 (the "Notice"), upon the Tenant at the rental unit on March 12, 2011. He testified that he also mailed a copy of the Notice to the Tenant, by registered mail, to the rental unit on March 14, 2011. The Landlord provided a copy of the receipt and tracking number in evidence.

Monthly rent is \$800.00 per month, due on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00. The Tenant had a roommate, who paid the Tenant ½ of the rent and the Tenant in turn paid the Landlord the full amount of the rent. The Tenant owes rent, as follows:

December, 2010	\$400.00
January, 2011	\$200.00
February, 2011 (paid in full)	\$0.00
March, 2011	<u>\$400.00</u>
TOTAL	\$1,000.00

At the end of March, the Landlord received a cheque from social services in the amount of \$400.00 towards April rent, but the Landlord has not cashed the cheque because he did not want to reinstate the tenancy. The Landlord still has the cheque.

Analysis

I accept the Landlord's testimony that the Tenant was duly served with the Notice to End Tenancy. 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 22, 2011.

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, and the absence of any evidence to the contrary from the Tenant, the Landlord has established his claim, as follows:

Unpaid rent	\$1,000.00
Loss of revenue for April and May, 2011	<u>\$1,600.00</u>
TOTAL:	\$2,600.00

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of his monetary claim.

A tenancy is reinstated if a landlord accepts the outstanding rent and the parties agree that the notice to end tenancy is cancelled. In this case, the Tenant has not paid the outstanding rent in full and the Landlord does not wish to reinstate the tenancy or to create a new one with this Tenant. The Landlord may cash the cheque he is holding and set it off against the monies owed to the Landlord.

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 and loss of revenue	\$2,600.00
Recovery of the cost of the filing fee	\$50.00
Less amount of cheque received at end of March	<\$400.00>
Less security deposit	<u><\$400.00></u>
TOTAL amount due to Landlord after set off	\$1,850.00
	=====

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 **\$1,850.00** 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: May 03, 2011.

Residential Tenancy Branch