



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 late fees; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

Both parties appeared and gave affirmed testimony at the Hearing.

The Landlord testified that she mailed the Notice of Hearing documents, by registered mail, on the day that she picked up the documents from the Residential Tenancy Branch, but she could not locate the registered mail receipt. The Tenant acknowledged that she received the Notice of Hearing documents by registered mail. I am satisfied that the Tenant was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act.

The Landlord testified that she served the Tenant with copies of her documentary evidence by handing the documents to the Tenant at the rental unit on May 10, 2011.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on

September 1, 2007. The Tenant paid a security deposit in the amount of \$305.00 on August 26, 2007.

On January 11, 2011, the Landlord filed an Application for Dispute Resolution for an Order of Possession and a Monetary Order for unpaid rent. The proceeding was held by way of Direct Request, pursuant to the provisions of Section 55(4) of the Act. The Dispute Resolution Officer found that the Landlord was entitled to an Order of Possession, effective on 2 days service of the Order upon the Tenant, and a Monetary Order in the amount of \$1,112.00 for unpaid rent for November and December, 2010. The Landlord testified that she did not enforce the Order of Possession because the Tenant was able to provide satisfactory payments to the Landlord for the unpaid rent. The Landlord therefore reinstated the tenancy.

The Landlord and her agent gave the following testimony:

Monthly rent is \$680.00 per month, due the first day of each month. The Tenant fell behind on her rent payments and the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on April 7, 2011. The Landlord posted the Notice to the Tenant's door on April 7, 2011, with a witness present.

The Landlord testified that the Tenant owed \$514.00 in rent as at February 28, 2011, and has made the following payments since then:

March 2, 2011	\$75.00
March 18, 2011	\$110.00
March 25, 2011	\$83.13
March 25, 2011	\$150.00
May 2, 2011	\$150.00
May 9, 2011	\$300.00

The Landlord seeks a late fee in the amount of \$25.00 for the month of April, 2011, as no rent at all was paid for that month.

The Landlord asked for an Order of Possession, effective May 31, 2011.

The Tenant and her advocate gave the following testimony:

The Landlord has not given the Tenant a proper accounting of rent owed and the Tenant is not certain how much rent she owes the Landlord. The Tenant pays rent when she can. The Tenant acknowledged that she did not pay any rent for the month of April, and paid only \$450.00 towards rent in the month of May, 2011.

The Tenant's advocate submitted that an Order of Possession should not be granted because the Tenant has made some payments towards rent owed.

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 7, 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 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 April 20, 2011. The Landlord is entitled to an Order of Possession and I make that Order. The Landlord's agent asked that the Order be effective May 31, 2011.

I find that the Landlord has not provided sufficient evidence to support her accounting that the Tenant owes rent in the amount of \$1,786.00, for the following reasons:

1. The Landlord provided a document in evidence showing an accounting of rent owed. The accounting indicates differing dates for the payment amounts from the dates the Landlord provided in oral testimony. The accounting also differs from the Landlord's oral testimony with respect to an amount paid (\$233.00 paid March 24 vs \$233.13 paid March 25). Furthermore, the \$75.00 payment the Landlord referred to in her oral testimony is not recorded in the accounting.

2. The Landlord provided copies of three Notices of Rent Increase which were provided to the Tenant throughout the tenancy. The first two Notices of Rent Increase comply with the regulations with respect to the amount of the increase. The most recent Notice of Rent Increase, dated June 1, 2010 for an effective date of November 1, 2010, imposes a rent increase that is more than is allowed by the regulations. Therefore, I find that the Notice is invalid and that monthly rent is currently \$655.00, not the \$680.00 the Landlord is claiming.

The Tenant acknowledges that she did not pay any rent for the month of April, and paid only partial rent for the month of May, 2011. Based on the Landlord's documentary evidence and the testimony of both parties, I find that the Landlord has proven a monetary claim for unpaid rent and loss of revenue in the amount of \$860.00 only, calculated as follows:

DATE	RENT DUE	TENANT PAID	BALANCE OWING
May 1 or 2, 2011		\$150.00	\$1,160.00
May 6 or 9, 2011		\$300.00	\$860.00

The remainder of the Landlord's claim for unpaid rent is dismissed without leave to reapply.

The Landlord seeks a late fee in the amount of \$25.00 for April's rent. The regulations allow for late fees up to \$25.00 if there is a clause in the tenancy agreement providing for such fees. There is such a clause in the tenancy agreement and I allow this portion of the Landlord's claim.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit, together with accrued interest, towards partial satisfaction of the Landlord's monetary claim.

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 award as follows:

Unpaid rent and loss of revenue	\$860.00
Subtotal	\$935.00
Less security deposit and accrued interest of \$6.20	- \$311.20
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$623.80

Conclusion

I hereby grant the Landlord an Order of Possession **effective 1:00 p.m., May 31, 2011.**

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 **\$623.80** 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 18, 2011.
