



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on May 30, 2011, the tenant did not participate in the conference call hearing.

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 loss of income?

Background and Evidence

The landlord's undisputed testimony is as follows. The tenant is obligated to pay \$1,123.00 per month in rent in advance on the first day of each month. The tenant paid his rent in the month of May with a cheque which was returned by the bank for insufficient funds. On May 3 the landlord served the tenant with a notice to end tenancy by posting the notice on the door of the rental unit.

The landlord testified that on June 3 the tenant gave her a cheque for \$2,344.00. She stated that she is not sure whether that cheque has yet cleared the bank. The landlord stated that she did not wish to reinstate the tenancy.

The landlord seeks an order of possession and a monetary order for \$1,106.00 in unpaid rent for May (at the beginning of May the tenant had a \$17.00 credit on his account), \$1,123.00 in rent and loss of income for each of the months of June and July, a \$25.00 NSF fee for the NSF cheque issued in May and \$20.00 in late payment charges for each of the months of May – July inclusive.

Analysis

I accept the landlord's undisputed testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that

the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the landlord's claim for loss of income for July is premature and I dismiss that claim with leave to reapply. I find that the landlord is entitled to a monetary order for \$2,324.00 which represents \$1,106.00 in rent for May, \$1,123.00 in loss of income for June, a \$25.00 NSF charge, a \$20.00 late payment fee for May and the \$50.00 filing fee paid to bring this application. The claim for late payment fees for the months of June and July is dismissed as the tenancy ended in May pursuant to the notice to end tenancy and therefore any payments made in June or July are for occupation only and are not made pursuant to the contractual arrangement and are therefore not subject to late payment charges.

I grant the landlord an order under section 67 for \$2,324.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the tenant's June 3 cheque for \$2,344.00 clears the bank, it will serve to satisfy this judgment.

Conclusion

The landlord is granted an order of possession and a monetary order for \$2,324.00.

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 13, 2011

Residential Tenancy Branch