



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent and loss of rent as well as recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent or loss of rent?
3. Is the landlord authorized to retain the security deposit?
4. Can the parties reach a mutual agreement to resolve their dispute?

Background and Evidence

The tenancy commenced April 1, 2009 and the tenants are currently required to pay rent of \$2,109.00 on the 1st day of every month. The tenants' rent cheque for the month of June 2011 was returned for insufficient funds. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and sent it registered mail on June 13, 2011. The Notice indicates \$2,109.00 was outstanding as of June 1, 2011. Due to a postal strike the tenants did not receive the registered mail until June 28, 2011.

On July 19, 2011 the tenant paid the landlord \$2,141.00 in cash, representing rent for June 2011, a late fee of \$25.00 and a NSF cheque charge of \$7.00. The tenant was issued a receipt for use and occupancy only. The tenant paid the landlord \$2,141.00 in cash again on July 22, 2011 and the landlord issued a receipt for use and occupancy only for July 2011; however, the tenant should not have paid the \$7.00 NSF charge for July.

The landlord has received a cheque for \$2,109.00 from a third party on behalf of the tenants for use and occupancy for August 2011. The cheque has been deposited but has not yet cleared.

During the hearing, the parties were able to reach a mutual agreement to resolve their dispute that I record as follows:

1. The tenancy shall continue provided the tenants pay their rent, in full, and on time every month hereafter;
2. The landlord shall be provided an Order of Possession that may be served upon the tenants should the tenants fail to fulfill the above-described term during the next six months.

Analysis

I accept the mutual agreement reached between the parties and make it an order to be binding upon both parties. In recognition of the mutual agreement I provide the landlord with Orders of Possession with this decision that may be served upon the tenant and enforced in The Supreme Court of British Columbia if the tenants do not pay their rent in full and on time during the next six months.

The Orders of Possession provided with this decision are effective and may be enforced two (2) days after service of the Order upon the tenants. Since the tenants are required to pay rent on the 1st day of every month, the earliest the landlord may serve the Order of Possession is on the 2nd day of the month. The landlord is not obligated to issue a 10 Day Notice if rent is not received during the next six months; rather, failure to pay rent in full and on time will be considered a breach of an Order of a Dispute Resolution Officer and the landlord may immediately serve the tenants with the Order of Possession.

With respect to the landlord's monetary claims I find the tenants have satisfied the outstanding rent for June and July 2011. As the landlord has deposited a cheque for August 2011 rent I dismiss that portion of the claim with leave to re-apply in the event the cheque does not clear or the tenants do not otherwise pay rent for August 2011.

I award the \$100.00 filing fee to the landlord and deduct \$7.00 for the overpayment made July 22, 2011. Accordingly, the tenants are ordered to pay the landlord \$93.00 in addition to their monthly rent in satisfaction of this award. If the tenants do not satisfy this order the landlord is authorized to deduct \$93.00 from the tenants' security deposit.

Conclusion

The parties have reached a mutual agreement to resolve this dispute. The landlord is provided an Order of Possession effective two (2) days after service. The Order of Possession may only be served and enforced if the tenants fail to pay rent in full and on time during the next six months.

The tenants have been ordered to pay the landlord \$93.00 in satisfaction of the filing fee paid for this application, less the overpayment of \$7.00 made in July 2011. Should the tenants fail to pay this amount the landlord is authorized to deduct \$93.00 from the tenants' security deposit.

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: August 04, 2011.

Residential Tenancy Branch