



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent, loss of rent, late charges and NSF charges. The tenants did not appear at the hearing. The landlord provided registered mail receipts to show the tenants were served with the hearing documents via registered mail sent to the rental unit on August 19, 2011. The tracking information provided by the landlord indicated that the tenants did not pick up the registered mail. The landlord confirmed the tenants are still residing in the rental unit.

Having been satisfied the tenants were sufficiently notified of this hearing I proceeded to hear from the landlord without the tenants present.

On a procedural note, the landlord requested that the monetary claim be amended to recognize partial payments received from the tenants since this application was filed and withdraw the request to retain the security deposit. I granted the request for amendment as I did not find the amendment prejudicial to the tenants.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for unpaid rent, late fees, and NSF fees as claimed?

Background and Evidence

The tenancy commenced March 1, 2011 and the tenants are required to pay rent of \$725.00 on the 1st day of every month. The tenancy agreement provides that the landlord may charge late and NSF administrative charges of \$25.00 each plus the amount charged to the landlord by the landlord's financial institution for NSF cheques.

The tenants' August 2011 rent cheque was returned NSF and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on August 8, 2011 and posted

it on the tenants' door that day. The Notice indicates that \$778.00 was outstanding as of August 1, 2011. This amount includes a late fee of \$25.00 and \$28.00 NSF charge.

The landlord filed this application on August 19, 2011 and then on September 1, 2011 the tenants paid \$735.00 and on September 16, 2011 they paid another \$600.00. The landlord is seeking a Monetary Order for the balance outstanding. The landlord confirmed an Order of Possession was still required although it is not their intention to enforce it if the tenants pay the amount indicated on the Monetary Order.

Documentary evidence provided and considered was a copy of the tenancy agreement, the tenants' ledger, the 10 Day Notice, registered mail receipts and registered mail tracking information print-outs.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice. Since the Notice was posted on the door it is deemed to be received three days later. In accordance with section 53 of the Act, the effective date on the Notice is automatically changed to read August 21, 2011.

Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the 10 Day Notice I find the tenancy ended August 21, 2011 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants. The landlord may enforce the Order of Possession in The Supreme Court of British Columbia as an Order of that court.

With respect to the landlord's monetary claim and upon review of the tenancy agreement I find as follows. The landlord has established an entitlement to unpaid rent and loss of rent for August and September, less the payments made by the tenants. I also find the landlord's late fees are in compliance with the Residential Tenancy Regulations. However, I find insufficient evidence to find compliance with the Regulations with respect to the NSF charges. The Regulations limit administrative charges for NSF cheques to \$25.00. In the absence of evidence to show the charges made by the landlord's financial institution I find the landlord has not substantiated the

additional charge of \$3.00 per NSF cheque. Therefore, I limit the landlord's NSF charges to \$25.00 each.

Since I have found the landlord's application to have merit I award the filing fee to the landlord. Upon review of the tenants' ledger I calculate the landlord is entitled to a Monetary Order calculated as follows:

Tenants' ledger balance as of July 31, 2011	\$ (5.00)
Credit for overcharged NSF fee in May 2011	(3.00)
August 2011 rent	725.00
August 2011 late fee	25.00
August 2011 NSF fee	25.00
September 2011 loss of rent	725.00
Filing fee paid for this application	50.00
Less: payment September 1, 2011	(735.00)
Less: payment September 16, 2011	<u>(600.00)</u>
Monetary Order	\$ 207.00

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as necessary. The security deposit remains in trust for the tenants, to be administered in accordance with the Act.

Conclusion

The landlord has been provided an Order of Possession effective two days after service upon the tenants. The landlord has been provided a Monetary Order in the amount of \$207.00 to serve upon the tenants. The security deposit remains in trust for the tenants, to be administered in accordance with the Act.

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: September 21, 2011.

Residential Tenancy Branch