

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for an order of possession as a result of a 10 day notice to end tenancy for unpaid rent, a monetary order request for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the pet damage deposit or security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Background and Evidence

The Landlord states that the Tenant was served with the notice of hearing documents by registered mail on August 22, 2011 and has provided a Canada Post receipt for registered mail. The Tenant confirmed receipt of the notice of hearing and evidence package.

The Landlord states that the Tenant was served with the 10 day notice to end tenancy for unpaid rent by putting the notice in the Tenant's mail slot on July 11, 2011. The Tenant confirms receiving the notice. This notice shows a move-out/vacate date of July 21, 2011.

The Landlord states that the Tenant still has possession of the rental unit and as of the date of the hearing has not made any rental payments. The Landlord is claiming \$8,969.00 in unpaid rent which includes June to September 2011 for 4 months. The Landlord is also claiming \$100.00 in late rent fees for each of the 4 months at \$25.00 each. The Tenant has confirmed in his direct testimony the amount of unpaid rent and the late rent fees in arrears.

Analysis

I accept the Landlord's undisputed testimony and I find that the Tenant was served with a notice to end tenancy for unpaid rent based upon the Tenant's own direct testimony. 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 on July 21, 2011. Based upon 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 has established a claim for the entire claim of \$8,969.00 through the Tenant's own testimony confirming the unpaid rent and late fees. The Landlord is also entitled to recovery of the \$100.00 filing fee. I grant the Landlord a monetary order under section 67 for the balance due of \$9,069.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The Landlord has filed an application to retain the security deposit. Neither party have disclosed the amount of the security deposit or any evidence on this matter. I have failed to ask the question during the hearing to clarify this matter. I decline to make an order for the security deposit. I note that Section 38 of the Residential Tenancy Act states,

- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
 - (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$9,069.00.

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: September 21, 2011.

Residential Tenancy Branch