

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This is an application filed by the Landlord for an order of possession resulting from a 10 day notice to end tenancy for unpaid rent, a monetary order request for unpaid rent and to recovery the filing fee.

The Landlord attended the hearing by conference call and gave undisputed testimony. The Tenant did not attend.

At the beginning of the hearing, the Landlord stated that the rent arrears being sought have been paid by the Tenant. The Landlord stated that the Tenant has made late rent payments and was issued receipts for use and occupancy only and was notified that the Landlord was still seeking an order of possession. At this time, the Landlord states that they are only seeking the order of possession, a \$25.00 NSF fee and recovery of the filing fee.

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 this Tenancy began on March 1, 2011 on a month to month basis as shown in the copy of the signed tenancy agreement. The monthly rent is \$1,250.00 payable on the 1st of each month and a security deposit of \$625.00 was paid on February 9, 2011.

The Landlord states that the Tenant was served with the notice of hearing documents by registered mail on both Tenants on August 22, 2011. The Landlord has provided the Canada Post Registered Mail Tracking Numbers, 79608548386 and 79608548372 as proof of service. The Landlord also states that the Tenant was served with the 10 day notice to end tenancy for unpaid rent on August 4, 2011 by posting it on the door. The Landlord states that the Tenant responded to the notice by making partial payment of the rent with direct payment which was later returned from the bank as NSF. The

Landlord stated that notice was given upon receipt of the rent payments that the Landlord is accepting the rent payments, but for use and occupancy only.

Analysis

I accept the Landlord's undisputed testimony and I find that the Tenant was served with the 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. I also find that the Tenant was properly served with the notice of hearing documents by registered mail. The Landlord has confirmed that the Tenant received the notice by accepting rent payments after the effective date of the notice for use and occupancy only and that the Landlord was still seeking an order of possession. 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 request, I find that the Landlord has established a claim for recovery of the reduced claim of a \$25.00 NSF charge. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord offset the awarded \$75.00 amount by withholding it from the \$625.00 security deposit.

Conclusion

The Landlord is granted an order of possession.
The Landlord may withhold \$75.00 from the 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: September 22, 2011.

Residential Tenancy Branch