

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:44 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters – Service of Documents

The landlord's agent testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on September 2, 2011. The landlord and the landlord's agent also testified that a copy of the landlord's dispute resolution hearing package was served to the tenant by posting it on his door on September 14, 2011.

I am satisfied that the landlord served the 10 Day Notice in accordance with the *Act*.

Section 89(2)(d) of the *Act* allows a landlord to serve an application for dispute resolution for an Order of Possession under section 55 of the *Act* by posting it on the tenant's door. I am satisfied that the landlord served the tenant with a copy of his dispute resolution hearing package with respect to his application for an Order of Possession in accordance with the *Act*.

The landlord's application for a monetary award requires service of a copy of the application for dispute resolution to the tenant in accordance with section 89(1) of the *Act*. Posting a copy of that application to the tenant's door is not one of the ways that an application for a monetary award can be served to a tenant. Consequently, I find that the landlord did not serve notice of his application for a monetary award to the tenant in accordance with section 89(1) of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on June 1, 2011. Monthly rent is set at \$800.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$400.00 security deposit paid on June 1, 2011.

The landlord applied for an end to this tenancy and an Order of Possession because the tenant did not pay the outstanding rent owing when he served the 10 Day Notice to the tenant. The landlord submitted an amended application for a monetary award of \$1,850.00, the amount of rent owing as of October 3, 2011, the date of his amended application.

Analysis - Order of Possession

The tenant failed to pay the \$1,000.00 identified as unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by September 13, 2011. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Landlord's Application for a Monetary Award

As the landlord did not serve notice of his application for a monetary award to the tenant in a way that is required under section 89(1) of the *Act*, I dismiss the landlord's application for a monetary award with leave to reapply.

Since the landlord has been partially successful in his application, I allow him to recover his \$50.00 filing fee for this application. To implement this monetary award, I allow the landlord to retain \$50.00 from the tenant's \$400.00 security deposit. I reduce the remaining portion of the tenant's security deposit retained by the landlord to \$350.00.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary award with leave to reapply.

I allow the landlord to recover his \$50.00 filing fee for his application by reducing the tenant's \$400.00 security deposit held by the landlord to \$350.00.

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*.