



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR; MNR; MNDC, MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenants.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to each of the Tenants, via registered mail, to the rental unit on September 22, 2011. The Landlord provided the receipts and tracking numbers for the registered documents. The Landlord's agent testified that he performed a search of the Canada Post tracking system and that the search indicated that delivery of the registered documents was attempted twice, September 23 and September 28, 2011. He stated that each time Canada Post left a notice indicating where the documents could be picked up but that neither Tenant has picked up the documents.

Based on the affirmed testimony of the Landlord's agent and the documentary evidence provided by the Landlord, I am satisfied that both of the Tenants were duly served with the Notice of Hearing documents and documentary evidence by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents, whether or not the recipient chooses to accept delivery. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and the Hearing proceeded in their absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent and loss of revenue?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

Monthly rent is \$1,278.75 per month, due the first day of each month. The Tenants paid a security deposit in the amount of \$650.00 on May 1, 2010.

On September 2, 2010, the Landlord's agent served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenants' door at the rental unit. A copy of the Notice to End Tenancy was submitted in evidence. The Landlord's agent testified that the Tenants remain in the rental unit.

The Landlord's agent testified that the Tenants paid \$650.00 of the unpaid rent on September 16, 2011, but the Landlord's agent did not reinstate the tenancy, and explained to the Tenants that the money was for use and occupancy of the rental unit only. The Landlord provided a copy of a receipt for the \$650.00 which indicates "use and occupancy only". The Landlord's agent testified that no further monies have been received to date.

The Landlord's agent requested a monetary award for unpaid rent and loss of revenue, as follows:

Unpaid rent as at September 1, 2011	\$1,278.75
Loss of revenue for October, 2011	\$1,278.75
Less amount paid September 16, 2011	<u>-\$650.00</u>
TOTAL	\$1,907.50

Analysis

I accept that the Landlord served the Tenants with the Notice to End Tenancy by posting the Notice on the Tenants' door on September 2, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenants did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on September 15, 2011.

The Tenants paid \$650.00 on September 16, 2011, and I am satisfied that the Landlord did not enter into a new tenancy with the Tenants by accepting that partial payment. I find that the Tenants are overholding and that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenants.

The Landlord's agent has established a monetary award for unpaid rent and loss of revenue in the amount of \$1,907.50.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of its monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

I hereby provide the Landlord with a Monetary Order against the Tenants, calculated as follows:

Unpaid rent and loss of revenue	\$1,907.50
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,957.50
Less security deposit	<u>- \$650.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,307.50

Conclusion

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$1,307.50** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: October 20, 2011.

Residential Tenancy Branch