



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 hearing concerned the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the term of tenancy was from September 16, 2010 to March 31, 2011. Thereafter, tenancy has continued on a month-to-month basis. Monthly rent of \$900.00 is payable in advance on the first day of each month, and a security deposit of \$450.00 was collected. The tenancy agreement provides that a \$20.00 fee will be assessed in the event of a late payment of rent.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated April 4, 2012. The notice was served by way of posting on the tenant's door on April 4, 2012. A copy of the notice was submitted in evidence. The notice reflects unpaid rent in the amount of \$920.00 (\$20.00 for March & \$900.00 for April). Subsequently, the tenant made the following payments toward rent:

\$250.00: April 17, 2012
\$250.00: April 24, 2012
\$449.00: April 25, 2012

Total: \$949.00

The parties agree that the tenant's total payment of \$949.00 reflects full payment of rent for March (\$20.00) and April (\$900.00), as well as the \$20.00 fee assessed for late payment of rent for April 2012. Setting aside for a moment the rent owed for May 2012, the parties also agree that the tenant has a credit of \$9.00 (\$949.00 - \$940.00).

The tenant does not dispute that rent has not presently been paid for May 2012, and the landlord confirmed the wish to seek an order of possession.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated April 4, 2012. The tenant did not pay the full amount of outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$970.00, which is comprised as follows:

\$900.00: unpaid rent for May 2012
\$20.00: fee for late payment of rent
\$50.00: filing fee

I order that the landlord retain the security deposit of \$450.00, and I grant the landlord a monetary order under section 67 of the Act for \$511.00 ([\$970.00 total amount owed - \$450.00 security deposit] - \$9.00 tenant's credit).

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$511.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court 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: May 07, 2012.

Residential Tenancy Branch