



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; MNSD; FF

Introduction

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

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents were handed to the male Tenant at the rental unit on July 25, 2012. He stated that the female Tenant was not home, but the male Tenant told him that he would let her know about the Hearing.

Based on the Landlord's affirmed testimony, I am satisfied that the male Tenant was duly served with the Notice of Hearing documents pursuant to the provisions of Section 89(1)(a) of the Act. I find that the Landlord did not serve the female Tenant with the Notice of Hearing documents. Therefore **the Landlord's application against the female Tenant is dismissed**. Despite being served with the Notice of Hearing documents, the male Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord gave the following testimony and evidence:

This tenancy started on April 1, 2011. Monthly rent is \$750.00 per month, due the first day of each month. The Tenants paid a security deposit in the amount of \$375.00 at the beginning of the tenancy.

The Tenants did not pay rent when it was due on July 1, 2012. On July 4, 2012, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, by

handing the Notice to the Tenants at the rental unit. The Tenants have not contested the Notice to End Tenancy and have not paid any of the outstanding rent.

Analysis

I accept that the Landlord served the Tenants with the Notice to End Tenancy on July 4, 2012. I accept the Landlord's testimony that the Tenants have not paid the outstanding rent. The Tenants have not filed an Application to cancel the Notice to End Tenancy. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on July 14, 2012. The Tenants are overholding and I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the male Tenant.

Co-tenants are jointly and severally responsible for debts and damages incurred in the tenancy. It is up to the Tenants to apportion those debts between themselves. I find that the Landlord has established a monetary claim for unpaid rent in the total amount of \$750.00 against the male Tenant.

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

The Landlord has been successful in his application and I find that he is entitled to recover the cost of the \$50.00 filing fee from the male Tenant.

I hereby provide the Landlord a Monetary Order against the male Tenant, calculated as follows:

Unpaid rent	\$750.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$800.00
Less security deposit	<u>- \$375.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$425.00

Conclusion

The Landlord's application against the female Tenant is **dismissed without leave to reapply**.

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

I hereby grant the Landlord a Monetary Order in the amount of **\$425.00** against the male Tenant. 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: August 16, 2012.

Residential Tenancy Branch