Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR; OPC; MNR; MNDC; FF

Introduction

This is the Landlord's application for an Order of Possession for unpaid rent; an Order of Possession for cause; a Monetary Order for unpaid rent and loss of revenue; 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 was handed to the female Tenant at her place of employment on July 30, 2012, with a witness present. The Landlord provided a witness statement in evidence.

The Landlord stated that the male Tenant had moved some time ago and that she sent him the Notice of Hearing documents to the rental unit by registered mail on July 30, 2012. The Landlord provided a copy of the registered mail receipt and tracking number in evidence. The Landlord testified that the documents were returned to her, undelivered.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

> **Commencement of Hearing** The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

With respect to service upon the female Tenant, I am satisfied that she was duly served pursuant to the provisions of Section 89(1)(a) of the Act.

With respect to service upon the male Tenant, the Landlord did not serve him at the address where she knows he resides pursuant to the provisions of Section 89(1)(c) of the Act; or to a forwarding address provided by him pursuant to the provisions of Section 89(1)(d) of the Act, and therefore I find that he was not duly served with the Notice of Hearing documents.

Co-tenants are jointly and severally responsible for debts and damages incurred during a tenancy. The Landlord chose to proceed against the female tenant only, and her application against the male Tenant was dismissed without leave to reapply. Despite

being served with the Notice of Hearing documents, the female Tenant did not sign into the teleconference and the Hearing proceeded in her 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 expenses?

Background and Evidence

The Landlord gave the following testimony and evidence:

A copy of the tenancy agreement was provided in evidence. This tenancy began on August 11, 2011. Monthly rent is $1,100.00, due on the 11th day of each month. The Tenants paid a security deposit in the amount of $550.00 and a pet damage deposit in the amount of $300.00 at the beginning of the tenancy.

The Landlord testified that the Tenant did not pay full rent on June 11, 2012 and has not paid any rent since.

The Landlord issued a Notice to End Tenancy for Unpaid Rent (the "Notice") on July 4, 2012. The Landlord testified that she served the female Tenant with the Notice on July 4, 2012 by handing the document to the Tenant at her place of employment. The Landlord provided a Proof of Service document which indicates that the female Tenant was served on July 4, 2012, at 3:10 p.m. The Proof of Service document was signed by a witness and the Tenant.

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

Unpaid rent due June 11, 2012	$700.00
Unpaid rent due July 11, 2012	$1,100.00
Loss of revenue for August 11 to September 11, 2012	$1,100.00
TOTAL AMOUNT CLAIMED	**$2,900.00**

The Landlord also seeks to recover the cost of the registered mail in the amount of $14.38 and the cost of gas in the amount of $40.96.

The Landlord asked if the security deposit and pet damage deposit could be applied towards her monetary award.

Analysis

Based on the undisputed affirmed testimony of the Landlord and the documentary evidence provided, I am satisfied that the Tenant was served with the Notice on July 4, 2012. I accept the Landlord's testimony that the Tenant did not pay the outstanding rent, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to the provisions of Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on July 14, 2012. I find that the Tenant is overholding and the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

As I have provided the Landlord with an Order of Possession for unpaid rent, the Landlord's application for an Order of Possession for Cause is dismissed as it is no longer required.

Based on the Landlord's undisputed affirmed testimony, I find that the Landlord has established her claim for unpaid rent and loss of revenue in the amount of **$2,900.00**.

The Landlord's claim for recovery of the cost of gas and registered mail is dismissed as there is no provision in the Act for recovery of these expenses.

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 her application and I find that she is entitled to recover the cost of the **$50.00** filing fee from the Tenant.

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

Unpaid rent and loss of revenue	$2,900.00
Recovery of the filing fee	$50.00
Subtotal	$2,950.00
Less security deposit and pet damage deposit	- $850.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	**$2,100.00**

Conclusion

The Landlord's claim against the male Tenant is **dismissed without leave to reapply.**

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the female Tenant**. 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 **$2,100.00** against the female 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 23, 2012.

Residential Tenancy Branch