



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 Landlords' 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 their monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord gave affirmed testimony at the Hearing.

The Landlord's agent testified that an agent of the Landlord's served the Tenants with the Notice of Hearing documents and their documentary evidence by handing both Tenants' copies to the Tenant TC at the rental unit on September 18, 2012. The Landlord provided a document signed by the Tenant TC and Landlord's agent. I am satisfied that the Tenant TC was duly served with the Notice of Hearing documents.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the Landlord serve each of the Tenants as set out under Section 89(1). In this case only the Tenant TC has been personally served with the Notice of Hearing documents. Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement. In other words, the Landlords may choose to seek a monetary award against one or both of the Tenants. As the Landlord did not serve the Tenant JP, as required by Section 89(1) of the Act, the Landlords' monetary claim against her is dismissed without leave to reapply. The Landlord indicated that she wished to proceed against the Tenant TC only with respect to the Landlords' monetary claim. It will be up to the Tenants to apportion any monetary award between themselves.

The Landlord has also requested an Order of Possession. Section 89(2) of the Act determines that the Landlord may leave a copy of the Notice of Hearing documents related to a request for an Order of Possession at the rental unit with an adult who apparently resides with the Tenant. I therefore find that the Tenant JP has sufficiently served with respect to the Landlords' application for an Order of Possession.

The Tenants did not sign into the Hearing, which remained open for 15 minutes.

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:

A copy of the tenancy agreement was provided in evidence. Monthly rent is \$850.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$425.00 on May 1, 2012.

The Tenants did not pay rent when it was due on September 1, 2012. On September 2, 2012, the Landlord issued a 10 Day Notice to End Tenancy (the "Notice") and posted it to the Tenants' door on the same day. The Landlord provided a Proof of Service documents, which is signed by a witness.

The Landlord testified that the Tenants paid \$300.00 to the Landlord on September 24, 2012, but the Landlord did not reinstate the tenancy, and provided the Tenant with a receipt for "use and occupancy only". The Landlord stated that the Tenants have not paid any money since September 24, 2012 and that they remain living in the rental unit. The Landlord also seeks late charges in the amount of \$50.00 for late rent for the months of September and October, 2012.

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, 2012. 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, 2012. 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.**

Based on the Landlord's undisputed testimony, I find that the Landlords have established a monetary award against the Tenant TC for unpaid rent for September, 2012, in the amount of **\$550.00** and loss of revenue for October in the amount of **\$850.00**. The tenancy agreement includes a clause for \$25.00 late fees. I find that the Landlord is entitled to late fees for the month of September, **\$25.00**, but not for the

month of October, as the fees are for late “rent” and the Landlords’ award for October, 2012 is for “loss of revenue”.

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

The Landlords have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

I hereby provide the Landlords a Monetary Order against the Tenant TC, calculated as follows:

Unpaid rent and Loss of revenue	\$1,400.00
Late fees for September, 2012	\$25.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,475.00
Less security deposit	<u>- \$425.00</u>
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$1,050.00

Conclusion

The Landlords are provided 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.

The Landlords are provided a Monetary Order in the amount of **\$1,050.00** for service upon the Tenant TC. 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 18, 2012.

Residential Tenancy Branch