

DECISION

Dispute Codes: OPR; MNR; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; and to recover the cost of the filing fee from the Tenant.

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 the Tenant, via registered mail, to the rental unit on October 18, 2012. The Landlord provided the registered mail receipt and tracking numbers in evidence.

Based on the affirmed testimony of the Landlord's agent and the documentary evidence provided by the Landlord, I am satisfied that the Tenant was 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. Despite being served with the Notice of Hearing documents, the 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's agent gave the following testimony and evidence:

A copy of the tenancy agreement was provided in evidence. The tenancy began on May 1, 2007. At the beginning of the tenancy, monthly rent was \$1,900.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,900.00 on April 30, 2007. The tenancy agreement was a term lease, ending on April 30, 2009.

The tenancy agreement was amended on February 23, 2009, when the parties made changes to the original agreement and initialed the changes: monthly rent was increased to \$2,000.00; and the term of the tenancy was extended to April 30, 2011.

The Landlord's agent testified that the Tenant was verbally notified of a \$50.00 rent increase effective June, 2011, bringing the monthly rent payable to \$2,050.00.

The Landlord's agent testified that she served the Tenant with the Notice to End Tenancy for Unpaid Rent on September 27, 2012, by attaching copies to the Tenant's door and to the door of the garage

of the rental unit. She stated that the Tenant has not paid any of the arrears and that he owes the following amount of rent:

August, 2012	\$150.00
September, 2012	\$2,050.00
October, 2012	\$2,050.00
November, 2012	<u>\$2,050.00</u>
TOTAL	\$6,300.00

The Landlord's agent asked to set off the security deposit against the Landlord's monetary award.

Analysis

I accept the Landlord's agent's undisputed affirmed testimony that she served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on September 27, 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 Tenant 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 Tenant is conclusively presumed to have accepted that the tenancy ended on October 2, 2012. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

Part 3 of the Act provides how a landlord must provide a notice of rent increase. The Tenant did not sign into the Hearing and therefore did not provide evidence with respect to the two rent increases. The tenancy agreement does not stipulate that the tenancy ended on April 30, 2009, and that it would not continue on a month-to-month basis at the end of the term. I find that the Landlord provided insufficient evidence that the rent increases were legal rent increases in accordance with the provisions of the Act. Therefore, I dismiss the Landlord's claim for amounts over the amount of the rent that was set at the beginning of the tenancy, in the total amount of \$600.00, **with leave to reapply.**

I find that the Landlord has established a monetary award for unpaid rent and loss of revenue, calculated as follows:

Unpaid rent for September, 2012	\$1,900.00
Unpaid rent for October, 2012	\$1,900.00
Loss of revenue for November, 2012	<u>\$1,900.00</u>
TOTAL	\$5,700.00

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit and accrued interest towards partial satisfaction of the Landlord's monetary claim. Interest in the amount of **\$47.99** 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 **\$100.00** filing fee from the Tenant.

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

Unpaid rent and loss of revenue	\$5,700.00
Recovery of the filing fee	<u>\$100.00</u>
Subtotal	\$5,800.00
Less security deposit and accrued interest	<u>- \$1,947.99</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$3,852.01

Conclusion

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the 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 **\$3,852.01** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

The Landlord is granted leave to reapply for the additional amount of unpaid rent and loss of revenue (\$600.00 in total) with respect to the two rent increases.

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: November 22, 2012.

Residential Tenancy Branch