



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 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 its monetary claim; 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 25, 2012. The Landlord provided the tracking numbers and registered mail receipt for the registered documents. The Landlord's agent stated that the documents were returned to the Landlord marked "unclaimed".

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 by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. The Tenant's choice not to accept delivery does not negate the service provisions of Section 89 of the Act. Despite being duly served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence. The conference 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's agent gave the following testimony and evidence:

This tenancy began on January 1, 2012. The rental unit is located in a building that provides subsidized rent. Market rent for the rental unit is \$1,035.00. The Tenant's monthly rent is \$540.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$515.00 on December 16, 2011.

The Tenant did not pay rent when it was due on September 1, 2012 or October 1, 2012. On October 2, 2012, at 11:35 a.m., the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting the Notice on the Tenant's door at the rental unit. The Tenant has not disputed the Notice.

The Landlord's agent testified that the Tenant still owes rent for September and October in the total amount of \$1,080.00. The Landlord also seeks compensation for loss of revenue for the month of November, 2012, in the amount of \$540.00.

The Landlord's agent stated that the building manager noticed on November 15, 2012, that the hydro has been cut off to the rental unit. The Landlord's agent stated that there was still some of the Tenant's belongings in the rental unit and therefore, she has not considered the rental unit to be abandoned. The Landlord's agent asked for an Order of Possession.

Analysis

Although the Landlord's agent did not tick off the box requesting compensation for damage or loss under the Act, regulation or tenancy agreement, it is clear from the "Details of Dispute" section and the Landlord's monetary calculation that the Landlord is seeking compensation for loss of revenue. Therefore I amended the Landlord's Application to include this claim.

I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on October 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 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 15, 2012. The Landlord is entitled to an Order of Possession and I make that Order, effective 2 days after service of the Order upon the Tenant.

Based on the undisputed testimony of the Landlord's agent, I find that the Landlord has established a monetary award for unpaid rent for September and October, 2012, and loss of revenue for November, 2012, in the total amount of \$1,620.00.

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

The Landlord has been successful in its application and I find that it 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	\$1,620.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,670.00
Less security deposit	- \$540.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,130.00

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 **\$1,130.00** 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.

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 29, 2012.

Residential Tenancy Branch