



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bristol Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR; MNR; MNSD; FF

Introduction

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

The Landlord AD ("AD") gave affirmed testimony at the Hearing.

AD testified that she hand delivered the Notice of Hearing documents and copies of the Landlords' documentary evidence to the Tenant at the rental unit on February 18, 2013, at 10:02 a.m.

Based on AD's affirmed testimony, I am satisfied that the Tenant was duly served with the Notice of Hearing documents and evidence. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

Preliminary Matter

AD testified that the Tenant has moved out of the rental unit without providing a forwarding address. AD was not certain what day the Tenant moved out, but stated that the keys to the rental unit were returned on March 9, 2013. Therefore, AD withdrew the Landlords' application for an Order of Possession, as the Landlord has taken back possession of the rental unit.

Issues to be Decided

- Are the Landlords entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

AD gave the following testimony and documentary evidence:

A copy of the tenancy agreement was provided in evidence. Monthly rent was \$850.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$425.00 on July 22, 2011.

The Tenant did not pay rent when it was due on February 1, 2013. On February 2, 2013, AD served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenant's door at the rental unit.

The Tenant has not paid any of February's rent. The Landlords also seek loss of revenue for the month of March, 2013 and late fees in the amount of \$25.00 for each month for a total of \$50.00.

Analysis

I accept AD's affirmed testimony that she served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on February 2, 2013. 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.

I accept AD's affirmed testimony that the Tenant did not pay 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 February 15, 2013. The Tenant did not move out of the rental unit and the evidence shows that the Landlords were unaware that she had moved until March 9, 2013. I find that the Tenant was overholding and that the Landlords have established their monetary claim for unpaid rent for the month of February and loss of revenue for the month of March, 2013.

There is a clause in the tenancy agreement allowing for late fees in the amount of \$25.00 for late payment of rent. Therefore, I allow the Landlords' claim in the amount of \$50.00 for late fees.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlords' monetary 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 Tenant.

The Landlords are hereby provided a Monetary Order, calculated as follows:

| | |
|----------------------------|----------------|
| Unpaid rent | \$1,700.00 |
| Late fees | \$50.00 |
| Recovery of the filing fee | <u>\$50.00</u> |

| | |
|---|------------|
| Subtotal | \$1,800.00 |
| Less security deposit | - \$425.00 |
| TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF | \$1,375.00 |

Conclusion

The Landlords' application for an Order of Possession is **withdrawn**.

I hereby provide the Landlords with a Monetary Order in the amount of **\$1,375.00** 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: March 15, 2013

Residential Tenancy Branch

