



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR; MNR; MNDC; 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 Tenants.

The Landlord's agent HC ("HC") gave affirmed testimony at the Hearing.

HC testified that she hand delivered the Notice of Hearing documents and copies of the Landlord's documentary evidence to each of the Tenants, at the rental unit on April 18, 2013.

Based on HC's affirmed testimony, I am satisfied that the Tenants were duly served with the Notice of Hearing documents and documentary evidence. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the teleconference which remained open for 15 minutes. The Hearing proceeded in their 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 for April and loss of revenue for May, 2013?

Background and Evidence

HC gave the following testimony and evidence:

Monthly rent is \$710.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$355.00 on August 13, 2012.

The Tenants did not pay rent when it was due on April 1, 2013. On April 5, 2013, at 6:35 p.m., HC served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, by leaving it personally with the female Tenant at the rental unit. A Proof of Service document was provided in evidence, which the female Tenant has signed acknowledging service.

HC testified that the Tenants paid \$530.00 in cash to the Landlord on April 19, 2013. HC stated that the Landlord did not reinstate the tenancy, and provided the Tenant with a receipt for “use and occupancy only” and explained to the Tenants that the payment did not reinstate the tenancy. The Tenants remain in the rental unit and therefore, the Landlord seeks loss of revenue for the month of May, 2013. HC testified that there was a small credit of \$.65 on the tenancy ledger from an overpayment made in August, 2012. The Landlord provided a tenant ledger, which indicates that the balance owing at April 2, 2013 was \$519.35. The Landlord’s agent requested a monetary order for loss of rent and late fees, as follows:

Unpaid rent, late fees as at April 2, 2013	\$519.35
Less amount paid April 19, 2013	<u>-\$530.00</u>
Subtotal	(\$10.65)
Loss of revenue, late fees for May, 2013	<u>\$730.00</u>
TOTAL AMOUNT CLAIMED	\$719.35

HC stated that the Landlord does not wish to apply the security deposit towards its monetary award.

Analysis

I accept that the Tenants were served with the Notice to End Tenancy on April 5, 2013. I accept HC’s undisputed affirmed testimony that the Tenants did not pay the arrears, or file for dispute resolution, within 5 days of receiving the Notice to End Tenancy. Therefore, pursuant to Section 46(5) of the Act, the Tenants were conclusively presumed to have accepted that the tenancy ended on April 15, 2013. I accept HC’s undisputed affirmed testimony that the Landlord provided the Tenants with a receipt for “use and occupancy only” and that the Tenants understood that the tenancy was not being reinstated.

Based on the testimony and documentary evidence provided, I find that the Landlord has established a monetary award in the amount of **\$719.35**.

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 Tenants.

The Landlord is holding the security deposit must be applied in accordance with the provisions of the Act.

Conclusion

I hereby provide the Landlord with 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.

I hereby provide the Landlord with a Monetary Order in the amount of **\$769.35** for service upon the Tenants. 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: May 16, 2013

Residential Tenancy Branch

