



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Anwar Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR; MNR; MND; MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and damage to the rental unit; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenants.

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

MA testified that he served both of the Tenants with Notice of Hearing documents on May 11, 2013, by handing the documents to the Tenants with a witness present. The Landlord provided a written statement of the witness in evidence.

Based on MA's affirmed testimony and the documentary evidence provided by the Landlord, I am satisfied that both of the Tenants were duly served with the Notice of Hearing documents by registered mail. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and 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 and damages?
- May the Landlord apply the security deposit towards its monetary award?

Background and Evidence

MA gave the following testimony:

Monthly rent is \$2,300.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$1,150.00 on or about March 1, 2012.

The Tenants did not pay rent when it was due in February, March or April, 2013. On April 22, 2013, the Tenants provided the Landlord with a letter indicating that they intended to pay April's rent on April 24, 2013, and that they would pay \$150.00 extra per month for two years until the remaining outstanding rent for February and March was paid in full. A copy of the letter was provided in evidence.

The Tenants did not pay April's rent on April 24, 2013, as they had promised. The Landlord issued a Notice to End Tenancy on May 1, 2013, and served the Tenant's on May 1, 2013, by leaving the Notice with an adult person who lives at the rental unit. The Landlord provided a copy of the Notice to End Tenancy and a Certificate of Service, signed by a witness, in evidence.

The Tenants have not paid any of the outstanding arrears. The Landlord seeks a monetary award of **\$11,500.00** for February, March, April, May and June rent.

MA stated that the Tenants are responsible for damages to the rental unit in the estimated amount of **\$4,000.00**. The Landlord did not provide any documentary evidence in support of this portion of his claim.

Analysis

I accept that the Tenants were served with the Notice to End Tenancy in accordance with the provisions of Section 88(e) of the Act. I accept MA's undisputed affirmed testimony that the Tenants did not pay all of the arrears, or file for dispute resolution, within 5 days of service of the Notice to End Tenancy. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on May 11, 2013. I find that the Landlord is entitled to an Order of Possession and a Monetary Order in the amount of **\$11,500.00** for unpaid rent.

I find that the Landlord provided insufficient evidence to support its application for damages. However, the Tenants did not attend the Hearing and therefore this portion of his application is dismissed **with leave to reapply**.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of its 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 **\$100.00** filing fee from the Tenants.

The Landlord has established a monetary award, calculated as follows:

| | |
|---|---------------------|
| Unpaid rent | \$11,500.00 |
| Recovery of the filing fee | <u>\$100.00</u> |
| Subtotal | \$11,600.00 |
| Less security deposit | <u>- \$1,150.00</u> |
| TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF | \$10,450.00 |

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 **\$10,450.00** 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.

The Landlord's application for a monetary award for damages is **dismissed with leave to reapply**.

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: June 06, 2013

Residential Tenancy Branch

