



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR; MNR; MNSD; FF

Introduction

This is the Landlord's Application for Dispute Resolution seeking an Order of Possession; a monetary award for unpaid rent; to apply the security deposit towards his monetary award; and to recover the cost of the filing fee from the Tenants.

This matter was scheduled to be heard by teleconference on May 29, 2017, at 11:00 a.m. The Landlord signed into the teleconference, but the Tenants did not. The Hearing remained open for 12 minutes.

The Landlord and his witness DL gave affirmed testimony. DL testified that he was present when the Landlord served the Tenants with the Notice of Hearing documents on April 26, 2017; and with his documentary evidence on May 13, 2017. DL stated that he was also present and witnessed the Landlord serving the male Tenant with the Notice to End Tenancy on April 3, 2017. The Landlord provided Proofs of Service of all of these documents and DL testified that his signature is on the Proofs of Service as a witness.

I am satisfied that the Tenants were duly served with notice of the Landlord's Application and the Hearing continued in the Tenants' absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a monetary award, and if so, in what amount?

Background and Evidence

This tenancy began on March 1, 2017. Monthly rent is \$1,850.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$925.00 on February 25, 2017.

I accept the Landlord's evidence that the Tenants were duly served with the 10 Day Notice to End Tenancy for Unpaid Rent issued April 3, 2017 (the "Notice") on April 3, 2017. The Notice indicates that the Tenants failed to pay rent in the amount of \$1,850.00 that was due on April 1, 2017.

The Landlord testified that the Tenants paid the following amounts towards the outstanding rent:

| | |
|----------------|-----------------|
| April 18, 2017 | \$300.00 |
| April 22, 2017 | \$1,400.00 |
| April 29, 2017 | <u>\$150.00</u> |
| TOTAL | \$1,850.00 |

The Landlord provided receipts for these payments, which clearly state that the payments were accepted for "use and occupancy only does not constitute reinstatement of tenancy agreement".

The Landlord testified that the Tenants remain in the rental unit and that rent for the month of May, 2017, has not been paid. He seeks a monetary award for \$1,850.00 for May's rent.

Analysis

The Tenants did not dispute the Notice, or pay the outstanding rent, within 5 days of receipt of the Notice. Therefore, the Tenants are conclusively presumed, under Section 46(5) of the Act, to have accepted that the tenancy ended on April 13, 2017. I accept the Landlord's evidence that the tenancy was not reinstated when the Tenants provided late payments towards rent. I find that the Tenants are overholding and that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenants.

Rule 4.2 of the Rules of Procedure provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Pursuant to the provisions of Rule 4.5, I amend the Landlord's Application to include a request for loss of revenue for the Month of May, 2017. I grant the Landlord a monetary award in the amount of \$1,850.00 for loss of revenue.

The Landlord's Application has merit and therefore I find that he is entitled to recover the cost of the filing fee from the Tenants.

Pursuant to the provisions of Section 72 of the Act, I order that the Landlord apply the security deposit towards his monetary award, and provide a Monetary Order, calculated as follows:

| | |
|-------------------------------------|-------------------------|
| Loss of revenue for May, 2017 | \$1,850.00 |
| Recovery of the filing fee | \$100.00 |
| Less se-off of the security deposit | <u><\$925.00></u> |
| TOTAL | \$1,025.00 |

Conclusion

The Landlord is hereby provided with an Order of Possession **effective 2 days after service of the Order upon the Tenants**. This Order may be enforced in the Supreme Court of British Columbia.

The Landlord is also provided with a Monetary Order in the amount of **\$1,025.00** for service upon the Tenants. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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 29, 2017

Residential Tenancy Branch