



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: OPR, MNR, MNSD, & FF

Introduction:

This hearing dealt with the landlord's application for an Order of Possession and a monetary claim related to non-payment of rent by the tenant. The landlord also seeks to retain the tenant's security deposit plus interest in partial satisfaction of this claim. Although the tenant was served with notice of this hearing and the landlord's application by registered mail, the tenant did not appear. The landlord failed to provide any evidence that the tenant was served by registered mail, however, in the absence of any evidence to the contrary I deem the tenant as having been served in accordance with section 89 of the *Act*.

Issues to be Determined:

Is the landlord entitled to an Order of Possession due to non-payment of rent? Has the landlord established a monetary claim related to non-payment of rent?

Background and Evidence:

This tenancy began on May 16, 2008 for the monthly rent of \$1,000.00 and a security deposit of \$500.00 paid on April 11, 2008. The tenancy was a fixed term lease for six months and then reverted to a month to month tenancy.

The tenant was served with a 10 day Notice to End Tenancy due to non-payment of rent on December 4, 2008. The landlord stated that the tenant has also failed to pay rent for January 2009 and as of the date of this hearing had not paid rent for February 2009.

The landlord is seeking an Order of Possession due to the tenant's failure to pay rent and is seeking a monetary claim for the outstanding rent for December 2008, January 2009 and also seeks outstanding rent for February 2009. The landlord is also seeking to charge the tenant \$50.00 for a cheque which had insufficient funds from October 2008.

The landlord provided a copy of the 10 day Notice to End Tenancy but did not provide a copy of the tenancy agreement. The landlord seeks to retain the tenant's security deposit plus interest in partial satisfaction of this claim.

Analysis and Reasons:

I accept the landlord's evidence that the tenant was served with a 10 day Notice to End Tenancy due to non-payment of rent. The tenant had five days to either pay the

outstanding rent or to file an application to dispute the notice. I accept the landlord's evidence that the tenant has not paid the outstanding rent and I have no evidence before me that the tenant filed to dispute the notice. Therefore, pursuant to section 46(5) of the *Act* I find that the tenant has conclusively accepted the end of the tenancy.

On this basis I grant the landlord's request for an Order of Possession effective **two (2) days** after it is served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I accept the landlord's claim for a monetary claim for the sum of \$2,050.00 comprised of outstanding rent for December 2008 and January 2009 plus the recovery of the \$50.00 filling fee paid for this application. I do not accept the landlord's request for a \$50.00 fee due to a cheque of the tenant's which had insufficient funds. While the *Act* allows the landlord to charge up to \$25.00 due to a NSF cheque, this charge must be clearly provided for in the tenancy agreement. As the landlord has not provided me with a copy of the tenancy agreement I will not accept this charge. I also find that it is premature to find that the landlord is entitled to compensation for loss of rental revenue for February 2009. The landlord has a duty to mitigate any damages and the landlord can seek further loss in a subsequent application.

I find that the landlord has established a total monetary claim for the sum of \$2,050.00. From this sum I Order that the landlord may retain the tenant's security deposit plus interest of \$505.43 in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance owed of **\$1,544.57**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion:

The landlord's application is granted. The landlord is issued an Order of Possession and a monetary Order related to non-payment of rent by the tenant.

Dated February 02, 2009.

Dispute Resolution Officer