



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an order of possession, a monetary order for unpaid rent, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee for this application. The landlord's agent participated in the hearing and gave affirmed testimony. Despite being personally served with the application for dispute resolution and notice of hearing on January 21, 2009, the tenant did not attend.

Issues to be Decided

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the *Act*

Background and Evidence

Pursuant to a written residential tenancy agreement, the term of tenancy was from July 28, 2008 to January 31, 2009. Thereafter, tenancy has continued on a month-to-month basis. Rent in the amount of \$795.00 is payable in advance on the first day of each month, and a security deposit of \$397.50 was collected on July 27, 2008.

The tenant failed to pay rent for the month of January 2009. Accordingly, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent. Following this, the tenant paid the overdue rent for January on January 22, 2009. Subsequently, the tenant failed to pay rent for the months of February and March 2009, and the landlord issued a 10 day notice to end tenancy for unpaid rent for each of these months dated, respectively, February 2 and March 2, 2009.

The landlord submitted into evidence copies of the 10 day notices. January's notice was both, posted on the tenant's door and personally delivered to him, February's notice was personally delivered to the tenant, and March's notice was posted on the tenant's door.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord's agent, I find that the tenant was served with three separate 10 day notices to end tenancy for unpaid rent. As for the notices issued in January and February 2009, the tenant did not pay outstanding rent within 5 days of receiving either notice and did not apply to dispute either notice. The tenant is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the notice which, in the case of the more recent notice dated February 2, 2009, was February 12, 2009. I therefore find that the landlord is entitled to an order of possession.

As for the monetary order, I find the landlord has established a claim for \$1,690.00. This is comprised of unpaid rent for February of \$795.00, unpaid rent for March of \$795.00, a \$25.00 fee for late payment of rent for both months totalling \$50.00, and the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$397.50 plus interest of \$2.57, and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of \$1,289.93 (\$1,690.00 - \$400.07).

Conclusion

I hereby issue an order of possession in favour of the landlord effective no later than **two (2) days** after service upon the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 67 of the *Act* for **\$1,289.93**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: March 5, 2009

Dispute Resolution Officer