

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

The Landlord's agent gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent, to keep all of the security deposit, and recover the filing fee from the Tenants.

- (1) Is the Landlord entitled to an Order of Possession?
- (2) Is the Landlord entitled to a monetary order?
- (3) Is the Landlord entitled to keep all of the security deposit?

Background and Evidence

Landlords' evidence

The Landlord's agent testified that she served the Tenants with the Notice to End Tenancy for Unpaid Rent or Utilities by posting the Notice to the door of the Tenants' residence on February 3, 2009.

The Landlord's agent testified that she mailed the Tenants copies of the Application for Dispute Resolution and hearing package on February 20, 2009, by registered mail to the Tenants' residential address. The Landlord provided copies of the Canada Post receipts and tracking numbers for the registered mail. The Landlord's agent testified that the package addressed to the Tenant DM was returned to the Landlord, unclaimed. The Landlord's agent testified that she performed a tracking search on the Canada Post website, which indicated that the Tenant NC picked up his package at the Post Office.

The Landlord's agent testified that:

- The tenancy started on December 1, 2008. The monthly rent is \$750.00, due on the first day of the month.
- The Tenants are in arrears of rent for February, 2009, in the amount of \$750.00.
- The Landlord believes the Tenants may have abandoned the rental property, but she is uncertain and requested an Order of Possession.
- The Landlord applied for loss of rent for the months of March and April, 2009, in the total amount of \$1,500.00.
- The Tenants paid a security deposit in the amount of \$375.00, in two payments: \$197.50 on December 1, 2009, and \$177.50 on December 3, 2009.

Analysis

I accept the Landlord's agent's testimony that the Tenants were duly served with the Notice to End Tenancy. Service by way of posting a document on a tenant's door is deemed to be served three days after posting the document. In this case, service was effected on February 6, 2009, and the effective end to the tenancy is therefore February 16, 2009.

The Tenants did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy and are therefore pursuant to Section 46(5) of the Act, conclusively presumed to have accepted that the tenancy

ended effective February 16, 2009. The Landlord is entitled to an Order of Possession and I make that order.

I accept the Landlord's agent's testimony that she mailed the Tenants the Notice of Hearing Package and Application for Dispute Resolution, by registered mail, on February 20, 2009. Pursuant to Section 90 of the Act, a document served in such a manner is deemed to have been received on the 5th day after mailing the document. In spite of being served with the documents, the Tenants did not appear at today's Hearing and the Hearing proceeded in their absence.

The Landlord's agent has established the Landlord's monetary claim for rent arrears for February, 2009 and loss of rent for March, 2009. It is premature to allow for total loss of rent for the month of April, 2009. I allow a prorated amount of \$25.00 per day (\$750.00/30 days) for 9 days, totalling \$225.00, for loss of rent to and including April 9, 2009. The Landlord is at liberty to apply for further loss of rent for the remainder of April, 2009, if necessary. Pursuant to Section 72 of the Act, the Landlord may apply the security deposit, together with any accrued interest thereon, towards its monetary order.

The Landlord has been successful in its application and is entitled to recover the filing fee in the amount of \$50.00 from the Tenants.

I therefore make a monetary order in favour of the Landlord in the amount of \$1,399.54, calculated as follows:

Unpaid rent for February, 2009:	\$750.00
Loss of rent for March, 2009:	\$750.00
Loss of rent from April 1 to 9, 2009	\$225.00
Recovery of filing fee	\$50.00
Less security deposit and interest of \$.46	<u><\$375.46></u>
TOTAL	\$1,399.54

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Conclusion

I grant the Landlord a monetary order for \$1,399.54 against the Tenants. This order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Under Section 55 of the Act, the Landlord is entitled to an Order of Possession and I hereby issue the order effective two days from service of the order. This order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

April 9, 2009
