



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was reconvened pursuant to a Direct Request Proceeding decision. The landlord requested an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, loss of rent, retention of the security deposit and recovery of the filing fee. The tenants did not appear at the hearing. The landlord provided documentary evidence that the landlord served both tenants with the Landlord's Application for Dispute Resolution by registered mail. The landlord testified the registered mail was returned as unclaimed by the tenants. The landlord and the landlord's witness testified that the female tenant was personally served with notification of today's hearing within three days of receiving the Direct Request decision. The female tenant was provided two copies of the hearing package, including one for the other tenant.

The landlord has applied for a Monetary Order which requires that the landlord serve each respondent as set out under section 89(1). In this case only one of the two tenants has been personally served with the Notice of Hearing. Therefore, I find that the request for a Monetary Order against both tenants must be amended to include only the female tenant who has been properly served with notification of this hearing. As the second tenant has not been properly served the Notice of Hearing as required by section 89(1) of the Act the monetary claim against the other tenant is dismissed without leave to reapply.

The landlord has requested an Order of possession against both tenants. Section 89(2) of the Act determines that the landlord may leave a copy of the hearing documents related to a request for an Order of possession at the tenant's residence with an adult who apparently resides with the tenant. As both tenants are signatories to the tenancy

Residential Tenancy Branch
Ministry of Housing and Social Development

agreement I have determined that both parties have been sufficiently served with the portion of the Notice of Hearing and Application for Dispute Resolution relating to the request for an Order of Possession. Accordingly, the Order of Possession names both tenants.

Having enquired about the living accommodation and tenancy relationship, I am satisfied that the *Residential Tenancy Act* applies to this living accommodation and I have jurisdiction to resolve this dispute.

Issues(s) to be Decided

1. Whether the landlord is entitled to an Order of Possession.
2. Whether the landlord is entitled to a Monetary Order for unpaid rent and loss of rent.
3. Retention of the security deposit.
4. Award of the filing fee.

Background and Evidence

Upon review of the evidence submitted to me and the landlord's testimony, I make the following findings. The tenancy commenced November 1, 2008 and the tenants are required to pay rent of \$1,300.00 on the 1st day of every month. The tenants paid a security deposit of \$650.00 on October 17, 2008. The tenants failed to pay \$500.00 of the rent owing for March 2009. The tenants failed to pay rent for April 2009. The landlord served the tenants with a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on April 2, 2009 by posting it on the rental unit door. The Notice indicates that \$1,800.00 in rent was outstanding as of April 1, 2009 and has an effective date of April 12, 2009. The landlord testified that the tenants have not paid the outstanding rent or any monies for May 2009 yet the tenants continue to reside in the rental unit.

In making this application, the landlord sought recovery of the unpaid rent and loss of rent for May 2009.

Analysis

Where a tenant does not dispute a 10 Day Notice to End Tenancy or pay the outstanding rent within five days of receiving the Notice, the tenant is conclusively presumed to have accepted that the tenancy will end and the tenant will have to vacate the rental unit by the effective date. I am satisfied the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice.

Since the Notice was posted on the door, the Notice is deemed to be received by the tenants on April 5, 2009 and the effective date should read April 15, 2009. An incorrect effective date does not invalidate the Notice; however, it is automatically changed to comply with the Act. I am satisfied that the tenancy ended on April 15, 2009 yet the tenants continues to reside in the rental unit; therefore, the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two days after service of the Order of Possession upon the tenants. The Order of Possession may be enforced in The Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover unpaid rent for March and April 2009 and loss of rent for the month of May 2009. As the landlord was largely successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenants' security deposit in partial satisfaction of the rent owed by the tenants. I provide for the landlord with this decision a Monetary Order calculated as follows:



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Unpaid rent – March 2009	\$ 500.00
Unpaid rent – April 2009	1,300.00
Loss of rent – May 2009	1,300.00
Filing fee	50.00
Less: security deposit and accrued interest	<u>(652.02)</u>
Monetary Order	<u>\$ 2,497.98</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been provided with an Order of Possession effective two days after service upon the tenants.

The landlord has been authorized to retain the tenants' security deposit in partial satisfaction of the rent owed to the landlord and has been provided a Monetary Order in the amount of \$2,497.98.

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 27, 2009.

Dispute Resolution Officer