

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

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

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord's agent gave affirmed testimony at the Hearing and the Hearing proceeded on its merits.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; to a Monetary Order for loss of rent for the month of May, 2009; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 55, 67, and 72 of the Act.

Background and Evidence

The Landlord's agent gave the following evidence and oral testimony:

- The Landlord provided a copy of a residential tenancy agreement which was signed by the Tenant on September 8, 2008. The Tenant moved into the rental unit on September 15, 2008. Monthly rent is \$1,200.00, due on the first of the month. The Tenant paid a security deposit in the amount of \$600.00 on September 4, 2008.
- The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 3, 2009, with an effective vacancy date of April 13, 2009 for \$2,400.00 in unpaid rent.

- The Landlord's agent testified that she served the Tenant with a copy of the 10 Day Notice to End tenancy by depositing the Notice in the Tenant's mail box at the rental unit on April 4, 2009.
- The Landlord's agent testified that she mailed the Tenant the Notice of Hearing documents, by registered mail, on April 17, 2009. The Landlord's agent provided a tracking number for the registered mail documents. The item was successfully delivered to the Tenant on April 21, 2009.
- The Landlord's agent testified that the Tenant did not pay rent for the months of March and April, 2009. The Tenant remains in the rental unit. The Landlord's agent asked for loss of rent for the month of May, 2009 in the amount of \$1,200.00. The Landlord asked for late fees in the total amount of \$75.00 for the months of March, April and May, 2009.

Analysis

I accept the Landlord's agent's testimony with respect to service of the 10 Day Notice to End Tenancy. Section 90 of the Act deems service in this manner to be effected on the 3rd day after delivering the document to the Tenant's mail box. Therefore, the effective end of the tenancy was April 17, 2009. The Tenants did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days of being served with the Notice. Further to Section 46(5) of the Act, I find that the Tenant was conclusively presumed to have accepted that the tenancy ended on April 17, 2009, 10 days after service was affected. The Landlord is entitled to an immediate Order of Possession and I make that Order.

I accept the Landlord's agent's testimony that the Tenant was duly served with the Notice of Hearing documents, by registered mail. Despite being served with the documents, the Tenant did not appear at today's Hearing and the Hearing proceeded in her absence.

Part 7(d) of the Regulations allows for a fee of up to \$25.00 for late payment of rent, if the tenancy agreement provides for that fee. The tenancy agreement contains a clause with respect to an administrative fee for late payment of rent, in the amount of \$25.00. Therefore, the Landlord has established this portion of its claim.

I find that the Landlord is entitled to a monetary claim against the Tenant and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit.

The Landlord has been successful in its Application and is entitled to recover the filing fee from the Tenant. The Landlord has established a Monetary Order, as follows:

Unpaid Rent for March and April, 2009	\$2,400.00
Loss of Rent for May, 2009	\$1,200.00
Late fees for March, April and May, 2009	\$75.00
Filing fee	50.00
Sub total (Monetary Order in favor of the Landlord)	\$3,725.00
Less Security Deposit of \$600.00 plus interest of \$2.93	-\$602.93
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$3,122.07

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim in the amount of \$3,122.07 against the Tenant. The monetary Order must be served on the Tenant and is

enforceable through the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Dated: May 20, 2009.
