



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that he personally served the tenant with the notice of hearing at the rental unit on June 11, 2009 in the presence of his wife and father as witnesses. Having been satisfied that the landlord adequately served the tenant in accordance with the requirements of the Act, the hearing proceeded without the tenant present.

The landlord had submitted an amended application within the time limits imposed under the Act and testified he served the amended application upon the tenant. The amended application included a claim for \$750.00 for garbage removal.

During the hearing, the landlord requested his application be amended to remove the name of the tenant's minor son. I accepted the amendment and this decision and accompanying order name the adult female tenant only.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent and garbage removal?
3. Retention of the security deposit.
4. Award of the filing fee.

Background and Evidence

Upon hearing the landlord's undisputed testimony and review of the documentation submitted by the landlord as evidence, I make the following findings. The month-to-month tenancy commenced October 2008 and the tenant is required to pay \$675.00 on the 30th day of every month. The tenant paid \$40.00 towards the security deposit approximately one week after the tenancy commenced. On May 30, 2009 the tenant failed to pay rent and on May 31, 2009 the landlord posted a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on the tenant's door and personally served the



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tenant with the Notice on June 1, 2009. The tenant did not dispute the Notice or pay the outstanding rent within five days of receiving the Notice.

The landlord testified that he received \$570.00 from Income Assistance in mid-July on the tenant's behalf. The landlord affirmed that he has received no other monies from or on behalf of the tenant.

In making this application, the landlord is seeking compensation for unpaid rent due May 30, 2009 and June 30, 2009. In addition, the landlord claimed he incurred costs of \$750.00 to remove garbage from the property which he attributes to the tenant and her guests.

Analysis

Where a tenant is served with a Notice for unpaid rent, the tenant has five days to either pay the outstanding rent or dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date. In this case, the tenant did not dispute the Notice or pay the outstanding rent within five days.

Although the Notice indicates the tenancy ends effective June 9, 2009 the effective date must read June 10, 2009 to comply with the Act. An incorrect effective date on the Notice does not invalidate the Notice. Rather, the effective date is automatically changed to comply with the Act. Accordingly, I find the tenancy ended on June 10, 2009 and since the tenant continues to reside in the rental unit, the landlord is entitled to an Order of Possession. I provide an Order of Possession for the landlord with this decision effective two days after service upon the tenant. The landlord may file the Order of Possession with the Supreme Court of British Columbia to enforce as an Order of that court.

I am satisfied the landlord is entitled to unpaid rent and loss of rent for May 30, 2009 and June 30, 2009 less the \$570.00 partial payment received from Income Assistance. I grant the landlord's request to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. As the landlord was largely successful with this application, I also grant the landlord's request to recover the filing fee paid for this application from the tenant.

I do not award the garbage removal claim to the landlord as the landlord did not provide sufficient evidence to substantiate the claim such as dump receipts.



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In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – May 30, 2009	\$ 675.00
Loss of rent – June 30, 2009	675.00
Less: partial payment	(570.00)
Filing fee	50.00
Less: security deposit	<u>(40.00)</u>
Monetary Order	<u>\$ 790.00</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 is provided an Order of Possession effective two days after service upon the tenant.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance remaining of \$790.00.

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: July 22, 2009.

Dispute Resolution Officer