

Decision

Dispute Codes: OPR, MNSD, MNR, FF

Introduction

This is the Landlords' amended application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent for the months of December, January and February; to apply the security deposit towards their monetary award, and to recover the cost of the filing fee from the Tenants. This matter was originally before a Dispute Resolution officer by way of Direct Request on December 8 2009. The Dispute Resolution officer adjourned the matter for a participatory Hearing.

I reviewed the evidence provided by the Landlords prior to the Hearing. The Tenants did not provide any evidence. The Landlord gave affirmed testimony and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Are the Landlords entitled to an Order of Possession?
- (2) Are the Landlords entitled to a monetary order, and if so, in what amount?
- (3) Are the Landlords entitled to recover the filing fee from the Tenants?

Background and Evidence

Landlord AC's testimony

The Landlord testified that he served the Tenants with the Notice to End Tenancy at the rental unit on November 3, 2009 at 7:00 p.m. by posting the Notice on the Tenants' door. The Landlord provided a Proof of Service document in evidence, which was signed by a witness.

The Landlord testified that he mailed the Tenants the Application for Dispute Resolution filed November 23, 2009 by registered mail on November 24, 2009, and provided a copy of the registered mail receipt and tracking numbers in evidence.

The Landlord testified that he had attempted to personally serve the Tenants with the amended Application for Dispute Resolution and hearing package on January 7, 2010, at the rental unit, but the Tenant would not answer the door. The Landlord believed the Tenant CO to be present, but was avoiding the Landlord. The Landlord posted the document on the Tenants' door at 5:00 p.m. on January 7, 2010. The Landlord provided a Proof of Service of the Amended Application and hearing package at the rental unit, which was signed by a witness.

The Landlord testified that he mailed the Tenants the amended Application for Dispute Resolution filed January 6, 2010, by registered mail on January 8, 2010, and provided a copy of the registered mail receipt and tracking numbers in evidence.

The rental unit is a two bedroom house. Rent is \$1,200.00 per month. The Landlord received a security and pet deposit in the total amount of \$1,200.00 from the Tenant. The Landlord provided a breakdown of outstanding rent from November, 2008 to November, 2009. The Tenant fell behind in rent payments, as follows:

Date rent due	Amount due	Amount paid	Amount owing
November 1, 2008	\$1,200.00	0	\$1,200.00
December 1, 2008	\$1,200.00	\$800.00	\$1,600.00
January 1, 2009	\$1,200.00	0	\$2,800.00
February 1, 2009	\$1,200.00	0	\$4,000.00
March, 2009	\$1,200.00	\$2,034.00	\$3,166.00
April, 2009	\$1,200.00	0	\$4,366.00
May, 2009	\$1,200.00	0	\$5,565.00
June, 2009	\$1,200.00	\$800.00	\$5,966.00
July, 2009	\$1,200.00	0	\$7,166.00
August, 2009	\$1,200.00	\$4,800.00	\$3,566.00
September, 2009	\$1,200.00	0	\$4,766.00
October, 2009	\$1,200.00	0	\$5,966.00
Rent credit for labour		\$500.00	\$5,466.00

November, 2009	\$1,200.00	0	\$6,666.00
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The Tenants had attempted to further pay down the outstanding rent in May, 2009 in the total amount of \$5,870.00, but the cheques were returned to the Landlord on May 20, 2009, insufficient funds. Since November, 2008, a total of nine cheques have been returned to the Landlords, insufficient funds.

The Landlord testified that he is out of town for months at a time, and that the Tenants' cheques are written on a U.S. Company account. Therefore, the cheques can take months to clear the Landlords' bank account. The Landlord was hoping that the Tenants would catch up on their outstanding rent. The Landlord recently proposed a payment plan to the Tenants, but the Tenants have not responded to his offer. The Landlord stated that the Tenants are using delaying tactics.

The Landlord requested a monetary order, as follows:

Outstanding rent to November, 2009	\$6,666.00
Unpaid rent for December, 2009	\$1,200.00
Unpaid rent for January, 2010	\$1,200.00
Loss of rent for February, 2010	\$1,200.00
Recovery of filing fees	\$200.00
NSF fees for 9 cheques @\$25.00 per cheque	<u>\$225.00</u>
TOTAL	\$10,691.00

:Analysis

Further to the provisions of Section 71(2) of the Act, I find that the Tenants were sufficiently served with the amended Notice of Hearing documents, by posting the documents on the Tenants' door on January 7, 2010. I accept the Landlord's affirmed testimony that the Tenant CO was at home when the Landlord first attempted to serve him, but was evading service. Despite being served with the documents, the Tenants did not sign into the conference and the matter proceeded in their absence.

I accept the Landlord's testimony and documentary evidence that the Tenants were duly served with the Notice to End Tenancy on November 3, 2009, by posting the Notice on

the Tenants' door. Service in this manner is deemed to be effected 3 days from posting, on November 6, 2009. The Tenant 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. Pursuant to Section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. In this case, the effective end to the tenancy was November 16, 2009.

Therefore, the Landlords are entitled to an immediate Order of Possession and I make that order.

The Landlord requested recovery for two filing fees in the amount of \$100.00 each. There is no evidence that the Landlord paid more than \$100.00 in filing fees for this file, and therefore his application for the second filing fee is dismissed without leave to reapply. I suggest that the Landlord contact the Residential Tenancy Branch Administration with respect to any other filing fee he may have paid for this matter.

The Landlord requested a monetary order to include NSF charges for 9 returned cheques, in the amount of \$25.00 for each cheque. The *Residential Tenancy Regulations* allow for NSF charges to a maximum of \$25.00, if the tenancy agreement contains a clause for this provision. The subject tenancy agreement stipulates an NSF charge of \$150.00 per returned cheque, which is contrary to the provisions of the Regulations. In any event, this was not included in his Application for Dispute Resolution, and this portion of his application is dismissed without leave to reapply.

The Landlord requested a monetary award for loss of rent for the month of February, 2010. This application is premature and is dismissed with leave to reapply.

Based on the undisputed testimony of the Landlord, and the absence of any evidence to the contrary from the Tenants, the Landlords have established a monetary claim for unpaid rent and loss of rent to and including January, 2010.

Pursuant to the provisions of the Act, the Landlords may retain the security deposit and accrued interest towards partial satisfaction of their monetary claim.

The Landlords have been partially successful in their application and are entitled to recover the cost of the filing fee in the amount of \$100.00.

I provide the Landlords with a Monetary Order, calculated as follows:

Outstanding rent to November, 2009	\$6,666.00
Loss of rent for December, 2009	\$1,200.00
Loss of rent for January, 2010	\$1,200.00
Recovery of filing fee	\$100.00
Less security deposit and accrued interest	<u>-\$1,203.00</u>
TOTAL after set-off	\$7,963.00

Conclusion

I grant the Landlords an Order of Possession **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.

I hereby grant the Landlords a Monetary Order in the amount of \$7,963.00 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.

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.

January 19, 2010

Date of Decision

Corrected February 4, 2010