Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes   OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit; and, recovery of the filing fee. The tenant did not appear at the hearing. The landlord provided evidence that the tenant was served with notification of the landlord's application by registered mail sent to the rental unit. A search of the tracking number showed that the registered mail was successfully delivered to the tenant on December 29, 2010. I was satisfied the tenant was notified of this hearing and I proceeded to hear from the landlord without the tenant present.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to recover unpaid rent, loss of rent and late fees for the months November 2010 through January 2011?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord provided the following evidence. The tenancy commenced August 1, 2009 and the tenant paid a $299.00 security deposit on July 17, 2009. The tenant is required to pay rent of $729.00 on the 1st day of every month and the tenancy agreement provides for late fees of $25.00. The tenant failed to pay $547.04 of the rent owed for

November 2010 and on November 6, 2010 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice indicates $547.04 in rent was outstanding and had an effective date of November 16, 2010. The tenant did not pay the outstanding rent or any monies for use and occupancy for December 2010 or January 2011 yet continues to occupy the rental unit.

In making this application the landlord is seeking to recover unpaid rent of $547.04 for November, loss of rent for December 2010 and January 2011 in the amounts of $729.00 for each month, and late fees of $25.00 per month for November and December 2010.

As evidence, the landlord provided a copy of the tenancy agreement, the 10 Day Notice and a letter to the tenant dated November 21, 2010.

Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date.

Based upon the evidence before me, I am satisfied the landlord served the tenant with a 10 Day Notice and the tenant did not pay the outstanding rent or dispute the Notice. Since the Notice was posted on the door it is deemed to be received three days later and the effective date is automatically changed to read November 19, 2010 in accordance with section 53 of the Act. Therefore, I find the tenancy ended November 19, 2010.

Since the tenant continues to occupy the rental unit 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 tenant. The Order of Possession may be enforced in The Supreme Court of British Columbia as an Order of that court.

Based upon the evidence before me, I am satisfied that the landlord is entitled to recover unpaid rent of $547.04 from the tenant for the month of November 2010 and loss of rent for the months of December 2010 and January 2011. I award the landlord the late fee for November 2010 but not December 2010 as the tenancy ended in November 2010.

Since the landlord was successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed by the tenant.

I provide for the landlord with this decision a Monetary Order calculated as follows:

Unpaid rent – November 2010	$ 547.04
Late fee – November 2010	25.00
Loss of rent – December 2010	729.00
Loss of rent – January 2011	729.00
Filing fee	50.00
Less: security deposit	(299.00)
Monetary Order	$ 1,781.04

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 an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of $1,781.04 to serve upon the tenant.

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: January 14, 2011.

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                                    Residential Tenancy Branch