



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR; MNR; MNDC, MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and late fees, to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that she served the Tenant with the Notice of Hearing documents on July 21, 2011, by handing the documents to the Tenant at the rental unit.

Based on the affirmed testimony of the Landlord's agent, I am satisfied that the Tenant was duly served with the Notice of Hearing documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent and late fees?

Background and Evidence

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

Monthly rent is \$695.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$347.50 on June 1, 2009. The Landlord provided a copy of the tenancy agreement in evidence.

The Landlord's agent testified that the Tenant's rent was being paid by an inheritance but that it was not paid for March, April, May or June, 2011. On June 8, 2011, the Landlord received an e-mail from the Executor of the Tenant's mother's estate stating that he was waiting for a Clearance Certificate before he could pay out any more money from the Estate and asking for the amount required to satisfy the Tenant's debt. The Landlord's agent testified that she provided the amount to the Executor, but that she received no further correspondence.

On July 2, 2010, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by handing the Notice to the Tenant at the rental unit. The Landlord provided a Proof of Service document in evidence which was signed by a witness. The Tenant also signed the document, acknowledging service.

The Landlord' agent testified that the Tenant paid \$830.25 to the Landlord on July 29, 2011, but the Landlord did not reinstate the tenancy, and provided the Tenant with a receipt for "use and occupancy only".

The Landlord seeks a monetary order calculated as follows:

Unpaid rent for March to July, 2011	\$3,475.00
Late fees (5 months @ \$25.00 per month	\$125.00
Less amount paid July 29, 2011	<u>-\$830.25</u>
	\$2,769.75

The Landlord's agent stated that the Tenant is still living in the rental unit.

Analysis

I accept that the Landlord served the Tenant with the Notice to End Tenancy on July 2, 2011. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the

Tenant is conclusively presumed to have accepted that the tenancy ended on July 12, 2011. The Landlord is entitled to an Order of Possession and I make that Order, effective 2 days after service of the Order upon the Tenant.

The regulations allow for late fees up to \$25.00 if the tenancy agreement includes a provision for such fees. The tenancy agreement contains a clause for late fees in the amount of \$2,769.75.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Unpaid rent and late fees	\$2,769.75
Subtotal	\$2,819.75
Less security deposit	- \$347.50
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$2,472.25

Conclusion

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$2,472.25** for service upon the Tenant. This Order 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*.

Dated: August 23, 2011.

Residential Tenancy Branch