

Decision

Dispute Codes:

OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order for Possession and a Monetary Order for unpaid rent, to keep all or part of the security deposit, and recovery of the filing fee.

Service of the hearing documents was done via registered mail on March 13, 2009. The Canada Post receipt was provided as documentary evidence. The tenant was deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed pursuant to section 89 of the *Act*.

The landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written and documentary form, and make submissions to me.

The tenant did not attend the hearing despite being served the hearing documents via registered mail.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession pursuant to Section 55 of the *Residential Tenancy Act*
- Whether the landlord is entitled to monetary compensation under Section 67 of the *Act* for unpaid rent or utilities

- Whether the landlord is entitled to monetary compensation under Section 67 of the *Act* for money owed or compensation for damage or loss under the *Act*
- Whether the landlord is entitled to monetary compensation under section 72(1) of the *Act* to recover filing fee from the tenant for the cost of this application.

Background and Evidence

The tenancy is a month to month tenancy which commenced on February 22, 2000. The rent is \$610.00 per month, payable on the last day of each month for the following month (example: April rent is payable on March 31st), and the tenant paid \$ 235.00 security deposit on February 22, 2000.

The landlord provided verbal testimony stating that the hearing documents were sent to the tenant on March 13, 2009 via registered mail and provided the receipt as documentary evidence.

The landlord testified that the tenant failed to pay rent for March 2009; a 10 Day Notice to End Tenancy for Unpaid Rent was issued and posted on the tenant's door March 3, 2009 at 10:30 a.m. by landlord (2) in the company of landlord (1). The tenant is deemed to have been served the 10 Day Notice to End Tenancy on March 6, 2009, three days after it was posted, pursuant to Section 90 of the *Residential Tenancy Act*.

The landlord advised that the tenant currently owes \$610.00 for March 2009 rent, and utilities of \$13.66 payable to the City of New Westminster which are noted on the 10 Day Notice to End Tenancy. The landlord stated that he will not be able to rent the unit by April 1st and is requesting the monetary order to include \$610.00 for April 2009 rent.

The landlord testified that the utilities are in the tenant's name however in the City of New Westminster any outstanding balances become the owner's responsibility as all utilities billed by the City that have unpaid balances at the end of the year, are required by the Local Government Act to be transferred to the Property Tax account at the beginning of the following year, and become subject to interest as Taxes in Arrears from that date.

The landlord testified that the tenant was given written notice, weeks in advance, that the annual fire alarm test would be conducted on March 5, 2009. The landlord and a representative from the fire alarm company knocked on the tenant's door requesting access but the tenant slammed the door and denied them access to conduct the fire alarm test.

Analysis

Order of Possession - I allow the landlords' testimony that they served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the tenant's door. I find in favor of the landlord, as the tenant did not pay the rent or apply to dispute the Notice to End Tenancy within five days, and grant the Order of Possession, pursuant to Section 46 (1) of the *Residential Tenancy Act*.

Unpaid rent - The landlord is claiming unpaid rent of \$610.00 for March 2009 and has requested \$610.00 for the month of April 2009. With respect to March 2009 I find in favor of the landlord's claim to recover the costs for March rent.

With respect to the landlord's request for a monetary claim for April 2009, I cannot find in his favor as rent for April 2009 is not due until March 31, 2009. Although the landlord is being granted an Order of Possession, he is obligated under the *Act* to mitigate his losses and rent the unit as quickly as possible. At this point I cannot determine what

opportunities or obstacles the landlord will face in re-renting the unit so I dismiss his request to claim for April, 2009 rent with leave to reapply.

Unpaid Utilities – The *Act* requires that one month's written notice be issued to the tenant to recover the cost of utilities. The 10 Day Notice to end tenancy to request payment for rent and utilities was deemed to have been served on March 6, 2009 which is less than 1 month from today. In addition, to claim recovery of utility costs, documentary evidence must be provided in support of the amounts claimed by the landlord. I dismiss the landlord's claim for unpaid utilities with leave to reapply.

Filing Fee - \$50.00 I find that the landlords have succeeded in large and that they should recover the filing fee from the tenant pursuant to section 72(1) of the *Act*.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to a Monetary Order, including recovery from the tenant of the filing fee for this proceeding as follows:

Unpaid Rent (March 2009)	\$610.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlords)	\$660.00
Less Security Deposit and Interest (235.00 + 19.94)	-254.94
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$405.06

I hereby grant the landlord a Monetary Order under sections 67 and 72(1) of the *Residential Tenancy Act* of \$405.06. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's copy of this decision is accompanied by the Order of Possession and the Monetary Order. Both Orders must be served on the respondent.

March 31, 2009
Date of Decision

Dispute Resolution Officer