



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, CNC, MNR, MNSD, FF

Introduction

This hearing dealt with two applications: 1) from the landlord for an order of possession, a monetary order in compensation for unpaid rent / loss of rental income, retention of the security deposit / pet damage deposit in partial satisfaction of the claim, and recovery of the filing fee; 2) from the tenants for cancellation of notice to end tenancy for cause, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the tenants are entitled to cancellation of a notice to end tenancy for cause and recovery of the filing fee
- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on December 1, 2008. Rent in the amount of \$800.00 was payable in advance on the first day of each month. On November 17, 2008 a security deposit of \$412.50 and a pet damage deposit of \$412.50 were collected.

The landlord issued a 1 month notice to end tenancy for cause which was posted on the tenants' door on February 12, 2009. Following this, the landlord issued a 10 day notice to end tenancy for unpaid rent dated March 2, 2009. The date shown on the 10 day

notice by when the tenants must vacate the unit is March 12, 2009. Subsequently, the tenants failed to pay the outstanding rent for March 2009 and vacated the unit on April 1, 2009.

The tenants acknowledge that no rent was paid for March or April 2009. During the hearing the parties engaged in a discussion around the tenants' plan to remove some of their belongings which remain on the premises and, following that, the return of the unit keys to the landlord. It was agreed that the belongings will be removed and the keys returned by no later than April 16, 2009.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 1 month notice and a 10 day notice to end tenancy. The tenants did not pay the outstanding rent and have now vacated the unit. The tenants are therefore conclusively presumed to have accepted that the tenancy has ended. Accordingly, I set aside the tenants' application for cancellation of the 1 month notice to end tenancy for cause, and I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$1,675.00. This is comprised of unpaid rent of \$800.00 for March 2009, a fee of \$25.00 for late payment of rent for March 2009, loss of rental income of \$800.00 for April 2009, and recovery of the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$412.50, the pet damage deposit of \$412.50, plus combined interest on both of \$1.52, and I grant the landlord a monetary order under section 67 of the Act for the balance due of \$848.48 (\$1,675.00 - \$826.52).

As the outcome of this hearing favours the landlord, I dismiss the application from the tenants for recovery of the filing fee.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 67 of the Act for **\$848.48**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 16, 2009

Dispute Resolution Officer