

DECISION

Dispute Codes OPR MNR FF ET

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to recover the filing fee and to end the tenancy.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on March 13, 2009. Copies of the mail receipts were entered into evidence by the landlord. Tenants were deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed as per section 9(a) of the *Act*.

The landlord appeared, gave affirmed testimony, and was provided the opportunity to present his evidence orally, in writing, and documentary form.

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 under section 55 of the *Act*.
- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for unpaid rent.
- 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.
- Whether the landlord is entitled to keep all or part of the security deposit under section 38(1)(d) of the *Act*.

Background and Evidence

The tenancy is a fixed term commencing on February 19, 2009. The tenant paid a security deposit in the amount of \$740.00 on February 19, 2009 and rent in the amount of \$1,500.00 is due on the 19th of each month.

The landlord testified that the tenant paid the February 2009 rent with a cheque which was issued from a closed bank account and that the tenant paid the March 2009 rent with a cheque from a different bank account which was also closed. The landlord testified that the tenant has failed to pay any amount of rent since taking occupancy and that the tenant currently owes \$3,000 for February and March rental arrears.

The landlord testified that a 10 Day Notice to End Tenancy was placed in the tenant's mail box on March 4, 2009 at approximately 6:00 p.m. Witness (2) testified that she was witness to the landlord placing the 10 Day Notice in the tenant's mailbox on March 4, 2009 at approximately 6:00 p.m.

Witness (1) testified that he witnessed the landlord place a package of evidence in the tenant's mailbox on April 9, 2009 at approximately 5:00 p.m.

The landlord is requesting an Order of Possession effective as soon as possible.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

Order of Possession. I find that the landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the tenant failed to pay the rent within 5 days after receiving this notice, and that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

Claim for unpaid rent and late fee charge. The landlord claims unpaid rent of \$1,500.00 for February and \$1,500.00 for March 2009, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the tenant has failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly.

Filing Fee \$50.00. I find that the landlord has succeeded in large and that he should recover the filing fee from the tenants.

Keep all or part of security deposit. I find that the landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim to be offset against the tenant's security deposit of \$740.00 plus interest of \$0.00 for a total of \$740.00.

Conclusion

I find that the landlord is entitled to an Order of Possession for which a formal order has been issued. This Order must be served on the tenant and is enforceable through the Supreme Court of British Columbia.

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 (February and March 2009)	\$3,000.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	\$3,050.00
Less Security Deposit and Interest	-740.00
TOTAL MONETARY ORDER IN FAVOR OF THE LANDLORD	\$2,310.00

I hereby grant a Monetary Order of \$2,310.00 in favor of the landlord. This Order must be served on the respondent and is enforceable through the Provincial Court of British Columbia.

The landlord's copy of this decision is accompanied by the Order of Possession and the Monetary Order.

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: April 21, 2009.

Dispute Resolution Officer