

DECISION

Dispute Codes OPR MNR FF

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 loss of rent and filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, hand delivered by the landlord to the male tenant, in the presence of the female tenant, at the rental unit on March 19, 2009 at approximately 2:00 pm.

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

No one attended the hearing on behalf of the tenants.

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 was a fixed term tenancy commencing on February 15, 2008, which converted to a month to month tenancy effective April 1, 2009. The tenant paid a security deposit in the amount of \$600.00 on February 15, 2008 and rent in the amount of \$1,200.00 was due on the first of each month.

The landlord testified that the tenants owe \$800.00 for February 2009 rent and \$1,200.00 for March 2009 rent. The landlord issued a 10 day notice to end tenancy on January 23, 2009 and February 2, 2009. The landlord hand delivered the February 2, 2009 10 day notice, personally to the male tenant at the rental unit on February 2, 2009.

The landlord stated that this is the second time a 10 day notice has been issued to these tenants and he is wishing to proceed with his request for an Order of Possession to be 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 tenants failed to pay the rent within 5 days after receiving this notice, and that the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice

and must vacate the rental within two days of being served the order of possession pursuant to section 46(5) of the *Act*.

Claim for unpaid rent -The landlord claims loss of rent of \$800.00 for February 2009 and \$1,200.00 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 tenants have failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

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

Claim to 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 tenants' security deposit of \$600.00 plus interest of \$7.89 for a total of \$607.89.

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 tenants 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 tenants of the filing fee for this proceeding as follows:

Unpaid Rent (\$800.00 February 2009 and \$1,200.00 March 2009)	\$2,000.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$2050.00
Less Security Deposit and Interest	-607.89
TOTAL MONETARY ORDER IN FAVOR OF THE LANDLORD	\$1,442.11

I hereby grant a Monetary Order of \$1,442.11 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 22, 2009.

Dispute Resolution Officer