

DECISION

Dispute Codes OPR MNR MNSD 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 to recover the filing fee.

Service of the hearing documents to the first tenant was done in accordance with section 89 of the *Act*, handed to the tenant in person on March 18, 2009 at his place of employment. Notice of the hearing documents were not served to the second tenant.

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

No one attended for 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 damages or loss.

Background and Evidence

The tenancy was a fixed term commencing on September 17, 2008 expiring on September 17, 2009. The tenants paid a security deposit in the amount of \$500.00 on September 17, 2008 and rent in the amount of \$995.00 was due on the first of each month.

The landlord testified that the tenants failed to pay February 2009 rent on time so a 10 Day Notice to End Tenancy was posted on the tenant's door on February 25, 2009. The landlord advised that after serving tenant (1) with the notice of this hearing the tenant paid February 2009 rent but that they have now failed to pay the March and April 2009 rent.

The landlord advised that the tenants have moved out but that they have not returned the keys or cleaned the suite.

The landlord is requesting an Order of Possession effective as soon as possible and has requested to withdraw his monetary claim for unpaid rent and utilities as he has now suffered loss of rent for April and has noticed that there has been some damage to the rental unit for which he would like to reapply to obtain one monetary order for all amounts owing.

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 unit to which the notice relates pursuant to section 46(5) of the *Act*.

Monetary Claim - I approve the landlord's request to withdraw his monetary claim.

Conclusion

I find that the landlord is entitled to an Order of Possession effective 2 days upon service, for which a formal order has been issued. The landlord's copy of this decision is accompanied by the Order of Possession and must be served on the tenants and is enforceable through the Supreme Court of British Columbia.

I approve the landlord's request to withdraw his monetary claim with leave to reapply.

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 23, 2009.

Dispute Resolution Officer