

DECISION

Dispute Codes OPR OPB MNR MNSD MNDC 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, to offset the lost rent against the security deposit and to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on March 16, 2009. A copy of the mail receipt was entered into evidence by the landlord. The tenant is deemed to be served the hearing documents on March 21, 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 her evidence orally, in writing, and in 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 damages or loss.
- 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 month to month term commencing on November 25, 2008. The tenant paid a security deposit in the amount of \$500.00 on November 24, 2008 and rent in the amount of \$1,000.00 was due on the first of each month.

The landlord testified that the tenant failed to pay March 2009 rent. On March 2, 2009 the landlord issued a 10 day notice to end tenancy listing a move out date of March 15, 2009, and posted the notice on the tenant's door on the morning of March 2, 2009.

The landlord filed an Application for Dispute Resolution on March 16, 2009. The landlord provided evidence that the hearing documents were sent to the tenant on March 16, 2009 via registered mail, copies of the Canada Post receipt were entered into evidence.

The landlord testified that the tenant paid \$700.00 towards March 2009 and vacated the rental unit on March 31, 2009. The landlord testified that the rental unit was re-rented as of April 1, 2009.

The landlord withdrew her request for an Order of Possession and is seeking a monetary claim for the \$300.00 outstanding rent for March 2009 and to recover the \$50.00 filing fee.

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 - The tenant has vacated the rental unit and the landlord has withdrawn her application for an order of possession.

Claim for unpaid rent - The landlord claims loss of rent of \$300.00 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 on the first of each month.

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

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 tenant's security deposit of \$500.00 plus interest of \$0.78 for a total of \$500.78.

Conclusion

The request for an Order of Possession has been withdrawn.

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 for March 2009	\$300.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	\$350.00
Less Security Deposit and Interest	-500.78
TOTAL MONETARY ORDER IN FAVOR OF THE TENANT	\$150.78

I hereby grant a Monetary Order of \$150.78 in favor of the tenant. The tenant's copy of this decision is accompanied by the Monetary Order, which must be served on the landlord and is enforceable through the Provincial Court of British Columbia.

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: May 05, 2009.

Dispute Resolution Officer