

## **Dispute Codes:**

OPB, MNR, FF

## **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided prior to the Hearing. The Landlord KL gave affirmed testimony and the Hearing proceeded on its merits.

## **Issues to be Decided**

This is the Landlords’ application for an Order of Possession; a Monetary Order for unpaid rent and the security deposit; and to recover the filing fee from the Tenants for the cost of filing the application.

## **Background and Evidence**

### **Landlord KL’s testimony and evidence**

- On June 5, 2009, the Landlord KL mailed the Tenants the Notice of Hearing documents, via registered mail, to the rental unit. The Landlord provided the tracking numbers for both of the registered mail documents. The Landlord testified that the packages were returned “unclaimed” last week.
- The Landlords provided a copy of the residential tenancy agreement, signed by the Landlords and the co-Tenants on March 22, 2009. The tenancy started on April 1, 2009 and is a fixed term lease due to expire on April 1, 2010. Monthly rent is \$1,350.00, due on the first day of each month. The Tenants were required to pay a security deposit in the amount of \$500.00 by March 25, 2009.
- The Landlords provided a copy of a Mutual Agreement to End Tenancy effective June 1, 2009, signed by the Landlord KL and the Tenant DG, dated April 8, 2009. The Landlord KL testified that in consideration of the Tenants agreeing to vacate the rental unit on or before June 1, 2009, the Landlords agreed to pay the Tenants \$2,000.00 on or before June 2, 2009.
- The Tenants did not vacate the rental unit on June 1, 2009, and are in arrears of rent in the amount of \$500.00 for the month of May, 2009. The Landlords are

also applying for loss of rent for the months of June and July, 2009, together with a monetary order for the security deposit required, but not paid.

- The Landlord KL testified that the rental unit has been sold, effective June 1, 2009, and that the purchasers can not move in to the property because the Tenants are still there.

### **Analysis**

I am satisfied that the Landlords duly served the Tenants with the Notice of Hearing documents by registered mail, as set out in Section 89 of the Act. Section 90 of the Act deems service in this manner to be effected 5 days after mailing the Notice of Hearing documents. Therefore, I find that the Tenants were served with the Notice of Hearing documents on June 14, 2009. The Tenants did not sign into the teleconference and the Hearing proceeded in their absence.

**Order of Possession** – Co-tenants are jointly and severally responsible under the Act. I am satisfied that the tenancy ended on June 1, 2009, pursuant to Section 44(1)(c) of the Act. The Tenants did not vacate the rental unit on June 1, 2009, and pursuant to Section 55(2)(d) of the Act, I find the Landlords are entitled to an Order of Possession and I make that Order.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim against the Tenants for unpaid rent for the month of May. The Landlords are also entitled to loss of rent for the month of June, 2009, and pro-rated loss of rent from July 1, 2009 to and including July 8, 2009.

With respect to the Landlords' application for a monetary order for the security deposit required but not paid, the Act does not allow for security deposits to be paid at any time other than the time that the tenancy agreement is entered into. Therefore, this portion of the Landlords' claim is dismissed without leave to re-apply.

The Landlords have been successful in their Application and are entitled to recover the filing fee from the Tenants. The Landlords have established a Monetary Order, as follows:

|   |                   |
|---|-------------------|
| Unpaid Rent for May, 2009                             | \$500.00          |
| Loss of Rent for June, 2009                           | \$1,350.00        |
| Loss of Rent from July 1 – 8, 2009 (\$43.55 per diem) | \$348.40          |
| Filing fee  | 50.00             |
| <b>TOTAL AMOUNT DUE TO THE LANDLORDS</b>              | <b>\$2,248.40</b> |

In addition, the Landlords are at liberty to apply for further damages that may arise as a result of the Tenants overholding.

### Conclusion

I HEREBY FIND that the Landlords are entitled to an Order of Possession effective **two days after service on the Tenants**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlords' monetary claim in the amount of \$2,248.40 against the Tenants. The monetary Order must be served on the Tenants and is enforceable through the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

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: July 8, 2009.

---