DECISION

Dispute Codes: OPR, MNR, FF, CNR, ERP, MNDC

This is a cross applications by the parties. The landlord applied for an order of possession and a monetary order for unpaid rent and loss of income. The tenant applied 1) to cancel the notice to end tenancy, 2) for a monetary order for compensation for loss under the Act and the tenancy agreement, and 3) for the landlord to make emergency repairs for health and safety reasons.

During the hearing, the tenants withdrew their application for the landlord to make emergency repairs in the unit.

On March 15, 2007, the landlord collected a security deposit from the tenants in the amount of $550.00. The tenancy began on the same day. Rent in the amount of $1100.00 is payable in advance on the first day of each month. The tenants failed to pay rent in the month of May, 2009 and on May 7, the landlord served the tenants with a notice to end tenancy for non-payment of rent. The tenants further failed to pay rent in the month of June.

The tenants maintained that they had paid the May rent. The female tenant explained that she always paid the rent in cash and on May 5, she had put $1100.00 cash in an envelope and put it through the landlord's mail slot. When I asked if she had a checking account, the female tenant said "no". When I asked if she had a witness with her when she delivered the May rent, the female tenant said that her daughter was with her at the time. When I asked if she had received a receipt for the May rent, the female tenant said that she did not get one. When I asked if she had asked the landlord for a receipt for the May rent, the female tenant became evasive and hesitant. Eventually, she said "no". When I asked if she could provide proof from her bank that $1100.00 was withdrawn from her account on May 5, the female tenant again became evasive and hesitant. Eventually, she said that her daughter also contributed towards the

rent. When I asked why the landlord would serve them with a notice to end tenancy for unpaid rent on May 7 when she had paid the rent on May 5, the female tenant again became evasive and hesitant. Later in the hearing, she said that the landlord wanted to evict them because of their complaints about a mice problem.

The landlord said that he had never received the May rent from the tenants. He added that the male tenant had paid the April rent by check. And when the landlord pointed out to him that the check was post dated for April 10, the male tenant then paid the April rent by cash. The landlord submitted rent receipts for the period from January to April of 2009.

I have preferred the landlord's evidence about the non-payment of the May rent as I have not found the tenants' evidence to be credible or trustworthy. My finding is based on the following reasons. The female tenant was often evasive and hesitant in answering questions. The female tenant said that they did not have a checking account. However, a rent receipt dated April 12, 2009 shows that the tenants had tried to pay the April rent by a check dated April 10, 2009. I find unlikely that the tenants would not have requested a receipt for the May rent payment when the documentary evidence shows that a rent receipt was issued every month. I also find the tenants' assertion that the landlord wanted to evict them because of their complaints of mice to be unreasonable as evidence adduced shows that the landlord has taken several measures to eradicate the mice problem.

Based on the landlord's testimony, I find that the tenants were served with a notice to end tenancy for non-payment of rent. The tenants have not paid the outstanding rent and have not applied for dispute resolution to dispute the notice within the prescribed timeframe and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts, I find that the landlord is entitled to an order of possession. The tenants must be served with the order of possession. Should the tenants fail to

comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is seeking to recover from the tenants outstanding rent for the month of May in the amount of $1100.00. The tenants are currently still living in the rental unit and said that they have not paid the June rent. The landlord is therefore seeking to include a claim for loss of income for the month of June in the amount of $1100.00. I find that the tenants should reasonably have known that the landlord could not re-rent the unit while they were still in residence and I allow the claim for a further $1100.00.

As for the monetary order, I find that the landlord has established a claim for $1100.00 in unpaid rent and $1100.00 in loss of income. The landlord is also entitled to recovery of the $50.00 filing fee. I grant the landlord an order under section 67 for the balance due of $2250.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants are claiming for compensation for loss that resulted from a mice problem and a water leakage problem.

Both parties agreed that there was a mice problem in the unit. The tenants said that the mice had damaged their clothes and food. They are claiming a total of $6000.00 comprised of $3000.00 for their clothes and $2000.00 for food items. No evidence was adduced to prove the damages or the costs. I therefore find that the tenants have not proven the damages or the costs incurred in addressing such damages.

Both parties agreed that during the past winter, there was a burst pipe causing water to enter into the basement area. The tenants said that the water in the basement had damaged their belongings. They are claiming $2000.00 as compensation for their damaged belongings. The tenants were specific as to items damaged and their individual costs. As well, no evidence was adduced to

prove the damages or the costs. I therefore find that the tenants have not proven the damages or costs incurred in addressing such damages.

Based on the above, I dismiss the tenants' claim for compensation that resulted for a mice problem and a water leakage problem.