

## **DECISION**

**Dispute Codes:** MNR, MNDC, MNSD and FF

### **Introduction**

These applications were brought by both the landlords and the tenant.

By application of October 8, 2009, the landlords sought an Order of Possession pursuant to a 10-day Notice to End Tenancy served October 2, 2009. The landlords also sought a Monetary Order for the unpaid rent and loss of rent, recovery of the filing fee for this proceeding and authorization to the security deposit in set off against the balance owed.

By application of October 7, 2009, the tenant sought to have the Notice to End Tenancy set aside and recovery of his filing fee. By submission received November 10, 2009, the tenant sought to amend his application to include claims for damages amounting to \$9, 562.75.

This tenancy was the subject of a hearing on October 26, 2009 on the landlords' application for an early end of the tenancy under section 56 of the *Act*. The tenant did not attend and the landlord was granted an Order of Possession effective two days from service of it on the tenant.

As the tenant vacated the rental unit on October 19th and the Order of Possession granted full possession to the landlord by October 31, 2009, the matter of the Order of Possession is moot and not dealt with in the present hearing.

### **Issues to be Decided**

The landlords' application requires a decision on whether they are entitled to a Monetary Order for unpaid rent and loss of rent, recovery of the filing fee and authorization to retain the security deposit in set off against the balance owed.

The tenant's application requires a decision on whether he is entitled to a monetary order for work done to the rental building, costs for moving, power & gas deposits at his new residence, recovery of the first month's rent, livestock boarding, costs of trades he called to the rental unit and other costs. The tenant made these claims on the grounds that he left the rental unit because it was not habitable due to the lack of water, and concerns arising from an inspection of the home, well and septic system by health authorities and a failed inspection of the wood burning unit. The tenant also claims replacement cost for a children's swimming pool destroyed by the landlords' dog.

### **Background, Evidence and Analysis**

This tenancy began July 11, 2009 and ended on October 31, 2009 under the previously noted Order of Possession. Rent was \$1,000 per month and the landlords held a security deposit of \$500, \$50 of which was award to the landlord in a previous hearing. There are no condition inspection reports as required by section 23 and 39 of the *Act*.

As to the tenant's application, while he originally applied on October 7, 2009 to set aside at Notice to End Tenancy for unpaid rent served on October 2, 2009 and another Notice to End for cause, he sent a large amount of documentary evidence and photographs to the branch on, received November 10, 2009 in support of previously unmade monetary claims.

The landlord stated that had not received this evidence package. The tenant had not submitted proof of service and he was not able to provide a tracking or reference number for the express post by which he stated had sent he package.

In addition, I note that the bulk of the tenant's claims, moving and post tenancy expenses come under the assumption that tenancy ended by way of the tenant's written notice to end the tenancy given on October 18, 2009 to take effect on October 31, 2009.

In fact, the tenancy ended by virtue of an Order of Possession granted on the landlord's claim during a hearing which the tenant did not attend and an award for post tenancy expenses is highly unlikely.

Therefore, as the landlord stated he did not have the tenant's amended application or evidence and the tenant was unable to prove service, I find that the tenant's application must be dismissed with leave to reapply.

As to the landlord's application, I find that the tenant did not pay the rent for October 2009 and the landlord is entitled to a Monetary Order for that rent. However, I note concerns raised by the health inspection and wood stove inspection raise serious questions as to whether the rental unit was suitable for occupancy in November.

For that reason, and because the landlords have submitted no proof of their attempt to minimize their loss by advertising to find new tenants as required by section 7 of the *Act*, I must dismiss the landlords' claim for the loss of rent for November.

Thus, I find that the landlords are entitled to a Monetary Order for the October rent and authorization to retain the security deposit in set off against the balance owed. I find that the landlords contributed to this dispute in part by failing to provide water and I decline to award the filing fee for this proceeding.

The value of the security deposit was reduced by \$50 by the Dispute Resolution Officer presiding over the previous hearing having authorized the landlord to retain that amount from the deposit. The landlord's monetary award is calculated as follows:

October 2009 rent	\$1,000.00
Less security deposit remaining after previous hearing fee	- 450.00
<b>TOTAL</b>	<b>\$ 550.00</b>

## **Conclusion**

Thus, in addition to authorization to retain the remainder of the security deposit, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$550.00 for service on the tenant.