

DECISION AND REASONS

Dispute Codes: OP, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55;
3. An Order to retain the security and/or pet deposit pursuant to Section 38; and
4. An Order to recover the filing fee pursuant to Section 72.

I accept that the tenants were properly served with the Notice to End Tenancy and the Application for Dispute Resolution hearing package.

Both parties appeared were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord has cause to end this tenancy and receive an Order of Possession and whether the landlord is entitled to monetary order for unpaid rent and recovery of the filing fee.

Background and Findings

Order of Possession

The landlord testified that he served a 2 month Notice to End Tenancy for Landlord's Use of the Property on June 30, 2009 by leaving the Notice with the tenants. The tenants agreed that they would move at the end of August but they did not. The landlord says they are still living in the rental unit. There is no evidence that the tenant's

filed an Application seeking to dispute the Notice. I therefore find that the landlord is entitled to an Order for Possession. The tenants have not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant(s) has/have been deemed to have accepted the end of the tenancy on the date set out in the Notice.

Monetary Order

Rental Arrears

The landlord served a 2 Month Notice to End Tenancy for Landlord's use with an effective date of August 31, 2009. The landlord testified and the tenants agree that all of the rent was not paid for August 2009.

The Act says that tenants are entitled to one months free rent as compensation when served with a 2 month notice to end a tenancy for landlord's use. In these cases the tenants are entitled to withhold their final months' rent. I find that the final month of the tenancy was August 2009 and although the tenants withheld some rent, they did not withhold all of it. The landlord and tenants agree that the tenants paid all but \$325.00 of their August rent. I therefore dismiss the landlord's claim for the \$325.00 for August rent as I find this is part of the compensation due to the tenants.

With respect to the landlords claim for unpaid rent for the months of September, October and November the evidence is that the tenant's rent was due and payable on the 1st day of the month. The evidence also shows that the tenants did not move out in accordance with the Notice on August 31, 2009. The landlord made this Application for Dispute Resolution seeking an Order of Possession on September 16, 2009 and the tenants have remained in the rental unit without paying rent for the months of September, October and November. I find that the landlord was unable to use the rental unit for the family purpose specified on the 2 month Notice to End because the tenants remained in occupancy of the rental unit. As the tenants had the use and occupancy of the rental unit and the evidence shows they did not pay rent I find that the landlord is entitled to rent for the months of September, October and November each in the sum of \$1,925.00 for a total of \$5,775.00.

Security Deposit

I find further that the landlord is entitled to retain the security deposit and interest to the date of this decision in partial satisfaction of the rental arrears.

Filing Fees

I find that the landlord is entitled to recover the filing fees paid for this application.

Calculation of total Monetary Award

Rental Arrears	\$5,775.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest from May 1, 2007 to the date of this Order	-333.19
Total Monetary Award	\$5,491.81

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.