

## **DECISION**

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

### **Introduction**

These applications were brought by both the landlord and the tenants.

By application of August 24, 2009, the landlord seeks a Monetary Order for unpaid rent, carpet cleaning and recovery of the filing fee for this proceeding and authorization to retain a portion of the security deposit in set off.

By application of August 18, 2009, the tenant seeks return of his security deposit in double, return of rent, reimbursement of a \$7.50 bank fee charged when the landlord stopped payment on the security deposit cheque, and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

This matter requires a decision on whether and for how much either of the parties is entitled to a Monetary Order on their claims.

### **Background and Evidence**

This tenancy began on June 15, 2009 and ended on or about August 8, 2009. Rent was \$650 per month and the landlord held a security deposit of \$325 paid on June 1, 2009.

During the hearing, the landlord gave evidence that the tenant gave his notice to end tenancy verbally on July 15, 2009 to take effect on August 15, 2009. By letter of the same date, the landlord wrote to the tenant and acknowledged the notice and advised him, (correctly) that one month notice takes effect one month following the next rent due date. In this instance, notice would have been effective on August 31, 2009.

co5rrecthad provided agent gave evidence that this tenancy began September 1, 2009, rent is \$600 per month and the landlord holds a security deposit of \$250 paid on October 1, 2009.

This matter is complicated by fact that the parties have accused each other of taking their personal property, the landlord alleges threatening by the tenants, and the tenants have alleged assault against the landlord's son, a matter that resulted in a bail order against the son. The parties have called police on each other on a number of occasions.

The landlord alleges that the tenants have not paid rent for September, October, November or December and that receipts submitted by the tenants are forged.

## **Analysis**

I have examined the photocopied receipts submitted by the tenants and find that the detail was completed by the same hand that wrote the tenants' application which includes a very distinct printing of the tenants' names and cursive writing of amounts. The landlord's signature is in block printing, all capital letters, and would be very easy to duplicate.

The tenants have submitted a copy of an income assistance cheque dated October 5, 2009 identified as a security deposit, but submit receipts allegedly provided by the landlord for \$275 dated September 5, 2009 and \$100 dated August 20, 2009.

Another receipt indicates that the September rent was paid on August 27, 2009 (\$550 cash) and another that the October rent was paid on September 5, 2009. There are no receipts for November or December rent.

## **Analysis**

I find on the balance of probabilities that the tenants have not paid rent for some or all of the time claimed by the landlord, that such was the case at the time the tenants were served with the Notice to End Tenancy and that the tenants did not make payment within the five days permitted under section 46(4) of the *Act* to extinguish the notice.

Therefore, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenants.

However, given that the receipts submitted by the tenants are contested as forgeries by the landlord and are photocopies rather than originals, and given that they are incomplete with respect to November and December, I find that I cannot fairly assess the amount of the requested Monetary Order.

Therefore, I must dismiss the landlords' claim for a Monetary Order with leave to reapply with advice to the parties to submit original copies of any documentary evidence they submit in any future hearing on the subject. I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants and may do so by retaining \$50 from the tenants' security deposit.

## **Conclusion**

1. As they did not appear, the tenants' application is dismissed without leave to reapply;
2. The landlord's monetary claims are dismissed with leave to reapply;
3. The landlord may retain \$50 of the security deposit in recovery the filing fee;
4. The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.