

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNSD, MNDC, FF

### **Introduction**

This is the Landlord's application for an Order of Possession for Unpaid Rent; a monetary order for unpaid rent; to apply the security and pet deposit towards their monetary order; and to recover the cost of the filing fee from the Tenants.

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

### **Preliminary Issue**

At the onset of the Hearing, it was determined that the Tenants moved out of the rental unit on November 15, 2009. Therefore, the Landlord's application for an Order of Possession is dismissed as withdrawn.

### **Issues to be Decided**

- Are the Landlords entitled to a monetary order for unpaid rent and damages, and if so, in what amount?
- Are the Landlords entitled to recover the cost of the filing fee from the Tenants?

### **Background and Evidence**

The tenancy agreement was a one year lease, commencing May 1, 2009, and ending April 30, 2010. Monthly rent was \$2,000.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,000.00 and a pet deposit in the amount of \$500.00. Both deposits were paid to the Landlords on March 27, 2009. The Tenants did not pay rent for the month of November, 2009. The Landlords were able to re-rent the rental unit for December 1, 2009.

There was no move-out inspection done at the end of the tenancy. A move-in Condition Inspection Report was entered in evidence.

The Landlord testified that the Tenants still owed \$333.00 in unpaid rent because they moved in early (on April 25, 2009) and the parties had an agreement that the Tenants would pay prorated rent for 6 days in April. The Tenants testified that the rental unit was vacant and the Landlords had agreed the Tenants could move some belongings into the garage. The Tenants disputed that they had agreed to pay rent, and stated that they didn't live in the rental unit until May 1, 2009.

The Landlord testified that the Tenants were responsible for damages to the property and asked for a monetary order to include;

- \$472.50 for carpet shampooing which was not done when the Tenants moved out;
- \$295.32 for replacing broken/missing locks and rekeying them to one key; and
- \$77.00 for 3 ½ hours of cleaning at \$22.00 per hour.

The Tenants testified that they shampooed the carpets before they left and spent 3 days cleaning the rental unit to a standard that was better than adequate. The Tenants testified that there were a number of deficiencies in the rental unit that were not addressed while they were living there. The Tenants testified that the Landlords did not meet with them for a move-out inspection, although the Tenants requested one on November 30, 2009.

### **Analysis**

There was no written agreement with respect to prorated rent from April 25 to April 30, 2009. When verbal terms are clear and when both the Landlords and Tenants fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute. In a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. In this case the Landlords, as Applicants, have the onus of proving, during these proceedings, that their claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who

bears the burden of proof will not likely prevail. This portion of the Landlords' application is therefore dismissed.

Likewise, there was no Condition Inspection Report completed when the Tenants moved out of the rental unit. It is the Landlords' responsibility to provide 2 opportunities for the Tenants to perform a move-out inspection with the Landlords. If the Tenants do not agree to a time and date, or send an agent on their behalf, the Landlords must provide the Tenants with a written Notice of Final Inspection Opportunity. If the Tenants or their agent(s), do not attend, then the Landlords may completed the Condition Inspection Report in the Tenants' absence. There was conflicting verbal testimony with respect to the condition of the rental unit when the Tenants moved out, and therefore, this portion of the Landlords' application is also dismissed.

I am satisfied on the testimony of both parties that the Landlords are entitled to a Monetary Order for rent for the month of November, 2009, in the amount of \$2,000.00. Further to the provisions of Section 72 of the Act, the Landlords may apply the security and pet deposits towards their monetary award. The Landlords have been partially successful in their application and are entitled to recover the cost of the filing fee from the Tenants.

I provide the Landlord a Monetary Order, in the amount of \$550.00, calculated as follows:

Unpaid rent for November, 2009	\$2,000.00
Cost of filing fee	\$50.00
Less security and pet deposits	<u>-\$1,500.00</u>
Total due to Landlords after set-off	\$550.00

### **Conclusion**

I hereby grant the Landlords a Monetary Order against the Tenants in the amount of \$550.00. This Order must be served on the Tenants and may be filed in 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: January 12, 2010

---