

Decision

Dispute Codes: OPR, MNR, MNSD, MNDC, FF

Introduction

This is the Landlords' application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent for October, 2009 and loss of rent for November, 2009 and compensation for loss; to apply the security deposit towards their monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants did not appear at the Hearing. The Landlords gave affirmed evidence.

Preliminary Matters

At the onset of the Hearing, the female Landlord testified that the Tenants moved out of the rental unit on or about October 19, 2009. Therefore, the Landlords' application for an Order of Possession is dismissed as withdrawn.

Issue(s) to be Decided

- (1) Are the Landlords entitled to Monetary Order for unpaid rent for the month of October, 2009, loss of rent for the month of November, 2009, and compensation for banking charges in the amount of \$7.50 for returning the Tenant's October rent?
- (2) Are the Landlords entitled to apply the security deposit in partial satisfaction of their monetary award?

Background and Evidence

The female Landlord testified that she personally served both of the Tenants with the Notice of Hearing documents at the rental unit on January 6, 2010. The male Landlord was present as a witness when the Tenants were served with the Notice of Hearing documents. The female Landlord testified that the Tenants moved out of the rental unit immediately after being served with the Notice of Hearing documents.

The female Landlord gave the following testimony:

- Rent was \$1,150.00 per month, due on the first day of each month.
- The Tenants paid a security deposit in the amount of \$575.00 on June 1, 2009.
- The tenancy agreement was a term lease, due to expire on November 30, 2009. A copy of the tenancy agreement was entered in evidence.
- The Tenants' rent cheque for the month of October, 2009, was returned to the Landlords, "insufficient funds".
- The Landlords advertised the rental unit in the local newspaper, with ads running every day except Sundays. The Landlords provided documentary evidence that they placed ads to run from October 20, 2009 to November 4, 2009; November 5, 2009 to November 18, 2009; and November 20, 2009 to December 3, 2009. The Landlords re-rented the rental unit on December 15, 2009, at a reduced rent of \$1,050.00 per month.

Analysis

Based on the Landlords' testimony, I am satisfied that the Tenants were served with the Notice of Hearing documents. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the conference and the Hearing proceeded in their absence.

Based on the undisputed testimony of the female Landlord, I find that the Landlords are entitled to unpaid rent in the amount of \$1,150.00 for the month of October, 2009.

This was a term tenancy, due to end on November 30, 2009. The Landlords attempted to mitigate their loss by advertising in the local newspaper, but were unable to re-rent the rental unit until December 15, 2009. I find that the Landlords are entitled to loss of rent for the month of November, 2009 in the amount of \$1,150.00.

The Act allows Landlords to claim banking charges as a result of returned cheques. I allow the Landlords' claim for compensation in the amount of \$7.50 for NSF fees.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit towards partial satisfaction of their monetary award. No interest has accrued on the security deposit.

The Landlords have been successful in their application and are entitled to recover the cost of the filing fee from the Tenants.

The Landlords have established a Monetary Order, as follows:

Unpaid rent for October, 2009	\$1,150.00
Loss of rent for November, 2009	\$1,150.00
Compensation for NSF fees charged by bank	\$7.50
Recovery of filing fee	<u>\$50.00</u>
Subtotal	\$2,357.50
Less security deposit	<u>\$575.00</u>
Balance owing to the Landlords after set-off of security deposit	\$1,782.50

Conclusion

The Landlords' application for an Order of Possession is dismissed as withdrawn.

I hereby grant the Landlords a Monetary Order in the amount of \$1,782.50 against the Tenants. 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*.

February 12, 2010

Date of Decision
