



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and loss of rent, and recovery of the filing fee. The landlord and the male tenant appeared at the hearing. The parties confirmed that both tenants had been notified of this hearing by registered mail. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party.

As a preliminary matter I noted that only the female tenant had signed the tenancy agreement. Both the landlord and male tenant agreed that the male tenant should be identified as a tenant in this matter. No amendment to the application was made.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?
3. Award of the filing fee.

Background and Evidence

I was provided undisputed evidence as follows. The parties entered into a tenancy agreement on November 6, 2009 and the tenants took possession of the rental unit on that day. The tenants provided a cheque in the amount of \$4,000.00 to the landlord on November 6, 2009 which represented \$1,500.00 for the security deposit and \$2,500.00

for pro-rated rent for the month of November 2009. The cheque was returned for insufficient funds. The tenants did not replace the returned cheque or pay rent for the month of December 2009. On December 9, 2009 the landlord posted a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on the tenants' door. The Notice has an effective vacancy date of December 22, 2009 and indicates \$7,000.00 was outstanding as of December 1, 2009. The tenants did not pay the outstanding rent or dispute the Notice. The tenants continue to reside in the rental unit.

The tenant agreed to vacate the rental unit by 5:00 p.m. on February 13, 2010. The landlord requested an Order of Possession effective at 5:00 on February 13, 2010.

In making this application, the landlord is seeking a Monetary Order in the amount of \$9,050.00 which is equivalent to three months rent and an NSF fee and a late fee.

Analysis

Section 46 of the Act provides that where a tenant receives a 10 Day Notice to End Tenancy and does not pay the outstanding rent or dispute the Notice within five days, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date on the Notice and must vacate the rental unit by that date.

Upon review of the evidence before me, I am satisfied that the tenancy ended on December 22, 2009 and the tenants continue to reside in the rental unit; therefore, the landlord is entitled to an Order of Possession. With the landlord's agreement, I have provided the landlord with an Order of Possession effective at 5:00 p.m. on February 13, 2010. The Order of Possession must be served upon the tenants and may be enforced in the Supreme Court of British Columbia as an Order of that court.

Upon review of the tenancy agreement and all other evidence before me, I am satisfied that the landlord is entitled to recover unpaid rent of \$2,500.00 for November 2009, unpaid rent of \$3,000.00 for December 2009, an NSF fee and a late fee in the amount

of \$25.00 each. I am also satisfied that the landlord has incurred a loss of rent for the month of January 2010 and one-half of February 2010 as the tenants did not vacate by the effective date of the Notice and will continue to occupy the rental unit until February 13, 2010. The landlord retains the right to make a subsequent application if there subsequent losses incurred.

As the landlord was successful with this application, I also award the filing fee to the landlord. I provide for the landlord with this decision a Monetary Order calculated as follows:

Unpaid rent – November 2009	\$ 2,500.00
NSF fee – November 2009	25.00
Unpaid rent – December 2009	3,000.00
Late fee – December 2009	25.00
Loss of rent – January 2010	3,000.00
Loss of rent – ½ of February 2010	1,500.00
Filing fee	<u>100.00</u>
Monetary Order	<u>\$ 10,150.00</u>

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been provided an Order of Possession effective at 5:00 p.m. on February 13, 2010 to serve upon the tenants.

The landlord has been provided a Monetary Order in the amount of \$10,150.00 to serve upon the tenants.

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: February 10, 2010.

Dispute Resolution Officer