



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, 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; damage or loss under the Act, regulations or tenancy agreement; retention of the security deposit; and recovery of the filing fee. The tenants did not appear at the hearing. The landlord provided evidence that both named tenants were served with notification of this hearing by registered mail sent to the rental unit and that the registered mail was successfully delivered. Having been satisfied the tenants were notified of this hearing, I proceeded to hear from the landlord without the tenants present.

The male tenant made a late submission to the Residential Tenancy Branch indicating that he may not be in attendance at the hearing and evidence that he was attempting to obtain funds to pay the outstanding rent and a ledger of the amount he owed the landlord. The landlord confirmed that the tenant served him with the tenant's submissions and that the landlord had an opportunity to review the tenant's submissions. I accepted and considered the tenant's written submissions in the tenant's absence from the hearing.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?
3. Is the landlord entitled to retain the security deposit?

Background and Evidence

Upon hearing undisputed testimony of the landlord and the documentary evidence before me, I make the following findings. The tenants began occupying the rental unit in 2007 for a monthly rent of \$1,600.00 and payment of a \$800.00 security deposit. In February 2009 the parties signed a new tenancy agreement requiring the tenants to pay rent of \$1,500.00 on the 1st day of every month starting March 1, 2009. The tenants failed to pay rent when due for the months of May through October 2009, except a \$1,000.00 payment was made in mid May 2009. On October 29, 2009 the landlord personally served a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) upon the male tenant. The Notice indicates the tenants must vacate the rental unit by November 15, 2009 unless the outstanding rent of \$8,000.00 was paid within five days of receiving the Notice.

Upon review of the tenant's written submission, the landlord agreed that the tenants made direct deposits to the landlords bank account in the amount of \$500.00 on October 31, 2009, November 13, 2009, November 27, 2009, January 8, 2010 and January 22, 2009. The landlord stated that he discovered the direct deposit payments in his bank account and knew the deposits came from the tenants but that there was no communication between the parties with respect to the partial payments and withdrawal of the Notice. Upon further enquiry, the landlord stated that when the parties entered into the new tenancy agreement in 2009 the landlord discussed paying rent on time as this had been an issue in the past.

Analysis

Where a tenant is served with a Notice for unpaid rent, the tenant has five days to either pay the outstanding rent or dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and the

tenant must vacate the rental unit by that date. In this case, the tenants did not dispute the Notice or pay the outstanding rent within five days of receiving the Notice.

Therefore, I find the tenancy legally ended on November 15, 2009 and since the tenants continue to reside in the rental unit, the landlord is entitled to an Order of Possession effective two days after service upon the tenants. The Order of Possession may be enforced in The Supreme Court of British Columbia as an Order of that court.

Since partial payments were received after the effective date of the Notice, I have considered whether the Notice was withdrawn or waived by the landlord. Upon hearing from the landlord and upon review of the tenant's written submission, I do not find evidence that the landlord communicated to the tenant that the landlord had withdrawn the Notice or otherwise waived his right to end the tenancy based on the Notice issued October 29, 2009.

I am satisfied that the tenants failed to pay rent for May through November 2009 and the landlord is entitled to recover unpaid rent for those months, less the partial payments received from the tenants. I am also satisfied that the landlord has incurred loss of rent for the months of December 2009 through February 2010 as claimed by the landlord since the tenants have continued to reside in the rental unit. I authorize the landlord to retain the tenants' security deposit and accrued interest in partial satisfaction of the rent owed the landlord and I award the filing fee to the landlord.

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – May through November 2009	\$ 10,500.00	
Loss of rent – December 2009 through February 2010	4,500.00	
Less partial payments:		
May 2009	(1,000.00)	
October 31, 2009	(500.00)	
November 13, 2009	(500.00)	
November 27, 2009	(500.00)	
January 8, 2010	(500.00)	
January 22, 2010	(500.00)	<u>(3,500.00)</u>
Sub-total		\$ 11,500.00
Plus: filing fee		100.00
Less: security deposit and interest		<u>(822.21)</u>
Monetary Order		<u><u>\$ 10,777.79</u></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 is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is authorized to retain the tenants' security deposit and interest in partial satisfaction of the rent owed the landlord and the landlord has been provided a Monetary Order for the balance of \$10,777.79 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 16, 2010.

Dispute Resolution Officer