

DECISION

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

Introduction

This hearing dealt with a landlord's application for an Order of Possession; a Monetary Order for unpaid rent, damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit; recovery of the filing fee; and, other issues. The tenant did not appear at the hearing. The landlord provided evidence, including a receipt and tracking number, that the tenant was notified of this hearing by registered mail sent to the rental unit address on January 25, 2010. The landlord confirmed the tenant is still residing in the rental unit. I was satisfied the tenant was sufficiently served with notice of this hearing and I proceeded to hear from the landlord without the tenant present.

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, storage and late fees?
3. Retention of the security deposit and interest.
4. Award of the filing fee.

Background and Evidence

The landlord provided undisputed testimony and evidence as follows. The tenancy commenced September 1, 1997. The tenant is currently required to pay rent and storage of \$797.00 on the 1st day of the month. A \$312.00 security deposit was paid by the tenant on April 16, 1996 and transferred to the subject tenancy from a previous tenancy agreement. The tenant failed to pay rent for January 2010 when due and on January 2, 2010 the landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) indicating \$797.00 was outstanding. The landlord served both pages of the

Notice by posting it on the rental unit door and leaving a copy in the tenant's mailbox on January 2, 2010. The tenant did not pay the landlord the outstanding rent within five days of receiving the Notice.

The landlord testified that the tenant has paid the following amounts since the Notice was served: \$500.00 on January 31, 2010; \$400.00 on February 9, 2010 and \$800.00 on February 22, 2010. The landlord stated that the tenant was advised and given receipts for residential use only and that the parties had agreed the tenant would vacate by March 31, 2010. The landlord requested an Order of Possession effective March 31, 2010.

The landlord's monetary claim is for \$2,371.00 including rent, storage and late fees of \$25.00 for the months of January through March 2010 less payments received to date. The landlord requested retention of the security deposit and interest in partial satisfaction of the amount owed to the landlord. As evidence for the hearing, the landlord provided a copy of the 10 Day Notice, a copy of the tenant's ledger and the tenancy agreement.

The tenant's ledger reflects a credit of \$95.00 in December 2009 and the actual amount of unpaid rent and storage as of January 2, 2010 was \$702.00. Clause 8 of the tenancy agreement provides for a \$20.00 administration charge for paying rent late.

Analysis

Under section 46 of the Act, where a tenant receives 10 Day Notice to End Tenancy the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end and the tenant will have to vacate the rental unit by the effective date on the Notice.

I accept the landlord's testimony that the tenant was served with the Notice by positing it on the tenant's door and leaving it in the tenant's mailbox on January 2, 2010; therefore,

the tenant is deemed to have received the Notice on January 5, 2010 and the effective date of January 15, 2010 complies with the Act. Since the tenant did not pay the outstanding rent or dispute the Notice by January 10, 2010, I find that the tenancy ended on January 15, 2010 and the landlord is entitled to an Order of Possession. Since the landlord was willing to permit the tenant to occupy the rental unit until March 31, 2010 I provide the landlord with an Order of Possession effective at 1:00 p.m. on March 31, 2010. The Order of Possession must be served upon the tenant and may be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover unpaid rent and storage for January 2010 and loss of rent and storage for February and March 2010. I award a late fee of \$20.00 for the month of January 2010 pursuant to the terms of the tenancy agreement. As the tenancy ended in January I do not find the landlord entitled to late fees for February or March 2010.

As the landlord was largely successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit and accrued interest in partial satisfaction of the amount owed the landlord. With this decision, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent and storage – January 2010	\$ 702.00
Late fee – January 2010	20.00
Loss of rent and storage – February 2010	797.00
Loss of rent and storage – March 2010	797.00
Filing fee	50.00

Less: payments received (\$500.00 + \$400.00 + \$800.00)	(1,700.00)
Less: security deposit and accrued interest	<u>(360.70)</u>
Monetary Order for landlord	<u>\$ 305.30</u>

The landlord must serve the Monetary Order upon the tenant 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 1:00 p.m. on March 31, 2010** to serve upon the tenant. The landlord is authorized to retain the tenant's security deposit and accrued interest and has been provided a **Monetary Order for the balance of \$305.30**.

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: March 09, 2010.

Dispute Resolution Officer