

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on January 18, 2010. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

As the tenant gave evidence that she had vacated the rental unit on February 1, 2010, and as the landlord later confirmed that the tenant had moved, the request for an Order of Possession is now moot.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent and filing fee, and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on August 1, 2009 under a fixed term rental agreement set to end on July 31, 2010. Rent was \$2,200 per month and the landlord holds a security deposit of \$1,100 paid on July 27, 2009.

During the hearing, the landlord gave uncontested evidence that the tenant had a rent shortfall of \$580 from December 2009 and that she had paid no rent for January or February of 2010.

The tenant stated that she had given notice to end the tenancy on January 1, 2010 for February 1, 2010, but the landlord claimed no knowledge of the notice and the tenant submitted no documentary or corroborating evidence that she had given notice.

The tenant stated that she had withheld rent due to deficiencies in the rental unit, specifying a problem with rats.

The landlord gave evidence that, at the time of the hearing, a new tenant had yet to be found and work had been underway to prepare the unit for new tenants.

Analysis

Section 45 of the *Act* which sets out the provisions for a tenant's notice to end tenancy provides that:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Therefore, even if the tenant had been able to prove that she had given written notice, such notice would not have met these requirements as it set an end date before the end date of the fixed term agreement and it was not served before the rent due date.

In addition, while there are remedies available to tenants claiming deficiencies in the rental unit or rental agreement, withholding rent is not among them.

Furthermore, the tenant did not make application for remedy and her claims cannot be considered on a landlord's application for unpaid rent.

Therefore, I find that, including recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, I find that the tenant owes to the landlord an amount calculated as follows:

Rent shortfall for December 2009 ¹	\$ 580.00
Rent for January 2010	2,200.00
Rent for February 2010	\$ 2,200.00
Filing fee	<u>50.00</u>
Sub total	\$5,030.00
Less retained security deposit	- 1,100.00
Less interest (Julyh 27, 2009 to date)	- <u>00.00</u>
TOTAL	\$3,930.00

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$3,930.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 12, 2010