

DECISION

Dispute Codes: OPR, MNR, MND, 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 February 5, 2010. By the application and subsequent amendment, the landlord also sought a Monetary Order for the unpaid rent and utilities, repair of a fireplace chimney flue, recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

The landlord gave evidence that the tenants had vacated the rental unit on February 26, 2010, and an Order of Possession was no longer required.

Despite having been served with the Notice of Hearing served in person on February 10, 2010, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issues to be Decided

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

Background and Evidence

This tenancy began in August, 2009 and ended on February 26, 2010. Rent was \$1,050 per month and the landlord holds a security deposit of \$525 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenants had paid only half of the February rent and that the tenants had given notice on February 1, 2010 to end the tenancy at the end of the month. The tenants vacated without participating in the move-out condition inspection and without providing a forwarding address.

The landlord also submitted and makes claim for an invoice for utilities to the end of February for \$453.03. Under the rental agreement, utilities were to be paid by the tenants, but had not been paid at the time of the hearing and become attached to taxes for the property.

Finally, the landlord makes claim for \$100.80 for repairs to the fireplace chimney flue supported by a paid invoice. The landlord made explanation that a provision of the rental agreement prohibited use of the fireplace unless and until it was professionally cleaned. He stated that the tenants had used it without having it cleaned and had damaged the flue.

Analysis

Section 7 of the *Act* provides that if either party to a rental agreement breaches the agreement or legislation, the non-compliant party must compensate the other for any damage or loss that results from the non-compliance. Section 26 of the *Act* provides that tenants must pay rent when it is due and section 67 of the *Act* authorizes the issuance of a Monetary Order for amounts found owing.

I find that the tenants breached the rental agreement by failing to pay the rent on time, by failing to pay the utilities bill, and by using the fireplace without having it serviced as agreed.

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

Rent shortfall for February 2010	\$ 525.00
Unpaid utilities	453.03
Repair fireplace flue	100.80
Filing fee	<u>50.00</u>
Sub total	\$1,128.83
Less retained security deposit (No interest due)	- 525.00
TOTAL	\$603.83

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$603.83, enforceable through the Provincial Court of British Columbia, for service on the tenants.

March 30, 2010