

DECISION

Dispute Codes: MNR, MNDC, MNSD and FF

Introduction

These applications were brought by the landlord and the tenant.

By application received February 11, 2010, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on February 5, 2010. The landlord also seeks a Monetary Order for the unpaid rent and authorization to retain the security deposit in set off against the balance owed.

By application of November 11, 2009, the estate of the tenant seeks to have the Notice to End Tenancy set aside and recovery of the filing fee for this proceeding.

Issues to be Decided

These applications require a decision on whether the Notice to End Tenancy should be set aside or upheld with an Order of Possession and whether the landlord is entitled to a Monetary Order for the unpaid rent and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on October 15, 2009. Rent is \$1,388 per month and the landlord holds a security deposit of \$700 paid on or about October 15, 2009.

During the hearing, the landlord's agents gave evidence that the Notice to End Tenancy had been served when the tenant had failed to pay the rent for January and February of 2010.

The tenant makes claim that he had paid \$500 of the January rent.

The tenant further stated that he had offered the unpaid rent in full to the landlord when they met at the Residential Tenancy Branch office on February 11, 2010 to make their applications and that he had attempted to meet with the landlord within five days of receipt of the notice, but they had been unable to connect.

In the interim, the tenant has not paid rent for March 2010.

In addition, the landlord's application was amended to include a claim for \$479.73 in unpaid utilities, but according to the tenant, he was unable to retrieve the registered mail notice of the amendment because of a misspelling of his name.

The tenant claims that he will be able to pay all arrears plus the April rent within 10 days. The landlord agreed that if he did so, the tenancy would continue. In the event the tenant does not make payment as promised, the landlord requested an Order of Possession effective on the tenth day, April 9, 2010, at 1 p.m.

Analysis

I find that the landlord's proposal for a conditional Order of Possession to be a patently fair and reasonable proposal under the present circumstances.

Therefore, I find that the landlord is entitled to the Order of Possession effective at 1 p.m. on April 9, 2010, enforceable if the tenant does not pay all arrears and the April rent as specified in the table to follow:

In the absence of a tenant's ledger or numbered receipt book showing a consistent pattern of receipt issuance or other corroborating evidence, I find that the benefit of doubt on the claimed payment of \$500 in January must go to the tenant.

Thus, I find that by April 9, 2010, including authorization to retain the security deposit in set off and recovery of the filing fee for this proceeding, the tenant will owe to the landlord, an amount calculated as follows:

January rent (\$1,388 – \$500 claimed payment)	\$ 888.00
February rent	1,388.00
March rent	1,388.00
April rent	1,388.00
Filing fee	50.00
Sub total	\$5,102.00
Less retained security deposit (No interest due)	- 700
TOTAL	\$4,402.00

As all matters were effectively addressed by the landlord's application and the tenant's response to it, the tenant's application is dismissed.

Conclusion

If the tenant does not pay to the landlord \$5,102.00 by April 9, 2010, I hereby authorize and order that the landlord may enforce the Order of Possession issued with this decision to take effect at 1 p.m. on April 9, 2010. If the payment is made in full by the effective time and date of the notice, the order will be of no force or effect.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$4,402.00 for service on the tenant.

The landlord remains at liberty to make application for a Monetary Order for unpaid utilities and any further damages as may be ascertained at the conclusion of the tenancy.

March 30, 2010