

Decision

Dispute Codes:

OPR; MNR; MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of his monetary claim; and to recover the cost of the filing fee from the Tenants.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord gave affirmed testimony and the Hearing proceeded on its merits.

Preliminary Matter

At the outset of the Hearing, the Landlord testified that the Tenants had vacated the rental unit. Therefore, the Landlord withdrew his application for an Order of Possession.

The Landlord's application for an Order of Possession is dismissed as withdrawn.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord gave the following testimony and evidence:

The Landlord testified that the Tenants were served with the Notice to End Tenancy at 5:15 p.m. on February 23, 2009 at the rental unit.

The Landlord testified that the Notice of Hearing documents were sent to the Tenants, via registered mail, to the rental unit, on March 9, 2010. The Landlord provided copies of the registered mail receipts and tracking numbers. The Landlord stated that the documents were not picked up by the Tenants, and that he did not know the date that

the Tenants vacated the rental unit, only that it was between the date they were served with the Notice to End Tenancy (February 23, 2010) and the end of February, 2010.

The Landlord's agent testified that he spoke with the male Tenant on the phone on March 16, 2010 and was advised that the Tenants had moved out of the rental unit and the end of February.

The Landlord's Witness testified that the female Tenant came to the rental office on March 25, 2010, and the Witness served the female Tenant with the Notice of Hearing documents.

The Landlord testified that the tenancy agreement was for a fixed term, beginning on December 1, 2009 and ending November 30, 2010. A copy of the tenancy agreement was entered in evidence. Monthly rent was \$650.00, due on the first day of each month. A security deposit in the amount of \$325.00 was paid on November 2, 2009.

The Landlord testified that the Tenants were late paying their rent for January, 2010, and did not pay rent for the months of February and March, 2010. The Landlords are applying for late fees for the months of January, February and March, 2010; and unpaid rent for February and March. The Landlord testified that the rental unit was re-rented effective May 1, 2010.

The Landlord testified that the Tenants did not return the keys to the rental unit.

Analysis

The Landlord did not serve the male Tenant with the Notice of Hearing documents. Therefore the Landlord's claim against the male Tenant is dismissed without leave to reapply.

Tenants are jointly and severally responsible for debts related to a tenancy. In other words, the Landlord can recover the full amount of outstanding rent for both or either of the Tenants. It is up to the Tenants to apportion the amount owing to the Landlord between themselves.

I accept the Landlord's Witness's testimony that the Notice of Hearing documents were personally served on the female Tenant on March 25, 2010. Despite being served with the Notice of Hearing documents, the female Tenant did not sign into the Hearing and the matter proceeded in her absence.

Based on the undisputed testimony of the Landlord, I find that the Landlord is entitled to unpaid rent for the months of February and March, 2010. The Tenants moved out of the rental unit, without notifying the Landlords or returning the keys.

The Landlord is applying for late fees in the amount of \$30.00 per month for late payment of rent. The Act allows a maximum of \$25.00 for late fees, per month, if the tenancy agreement provides for late fees. The tenancy agreement contains a clause which provides for late fees. Therefore, I allow the Landlord's claim for late fees for January, February and March, 2010, in the total amount of \$75.00.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the female Tenant.

The Landlord has established a monetary claim as follows:

Unpaid rent for the months of February and March, 2010	\$1,300.00
Late fees for January, February and March, 2010	\$75.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,425.00
Less security deposit	- <u>\$325.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,100.00

Conclusion

The Landlord's application for an Order of Possession is dismissed as withdrawn.

I hereby grant the Landlord a Monetary Order in the amount of \$1,100.00 against the female Tenant. This Order must be served on the female Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: May 5, 2010