

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord provided affirmed testimony that on March 19, 2010 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number for each tenant was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenants did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on December 1, 2006, rent is \$1,070.00 per month, due on the first day of the month. A deposit in the sum of \$500.00 was paid on November 27, 2006.

The tenants have made the following rent payments:

Date Paid	Amount Paid	Arrears
February 2010	750.00	320.00
March 2010	600.00	470.00
April 2010	1000.00	70.00

May 2010	500.00	570.00
		1,467.00

The landlord issued receipts after each payment made, for use and occupancy only.

The landlord is claiming compensation in the sum of \$20.00 for the 5 months that late payments have been made, as included in clause 3 of the signed tenancy agreement.

The landlord stated that on March 2, 2010 a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of March 12, 2010, was served by posting to the door. The Notice was prepared by the agent's head office and the copy the agent posted to the door was signed at the time she posted the Notice. The agent's assistant was present as a witness to the agent signing the document and posting it to the door at approximately 4 p.m.

The Notice indicated that the Notice would be automatically cancelled if the landlord received **\$1,430.00** within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants are presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenants received the Notice to End Tenancy on March 5, 2010.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on March 5, 2010, I find that the earliest effective date of the Notice is March 15, 2010.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was March 15, 2010.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenant to vacate the rental unit on March 15, 2010, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no

evidence that the tenants exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after service to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$1,467.00 from December 2009 to May 2010, inclusive, and that the landlord is entitled to compensation in that amount.

Residential Tenancy Regulations allow imposition of late fees in the sum of \$20.00; therefore, I find that the landlord is entitled to late fees of \$20.00 for each December 2009, to May, 2010.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$515.37, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$1,617.00, which is comprised of \$1,467.00 in unpaid rent from December 2009 to May 2010, inclusive; \$100.00 late fees from December 2009 to May 2010, inclusive and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$515.37, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,101.63**. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court 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 05, 2010.

Dispute Resolution Officer