

DECISION

Dispute Codes OPR, MNR, MDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent, damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. The tenants did not appear at the hearing. The landlord testified and provided documentary evidence that each of the tenants were notified of this hearing by registered mail sent to the rental unit address on March 22, 2010. The landlord testified that the registered mail was returned as unclaimed for each of the tenants and that the tenants still reside in the rental unit. I was satisfied the landlord served the tenants with notification of this hearing in a manner that complies with the Act and I proceeded to hear from the landlord without the tenants present.

The landlord requested that this application be amended to include a request to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord. I accepted the landlord's request for amendment.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?
3. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The landlord testified as follows. The tenancy commenced February 1, 2010 and the tenants paid a \$450.00 security deposit. The tenants are required to pay rent of \$900.00 on the 1st day of every month. The rent cheque for March 2010 was returned for insufficient funds. The landlord notified the tenant of the returned cheque and when the rent was not forthcoming the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on March 14, 2010. The Notice has an effective date of March 24, 2010 and was served by leaving the Notice on the stove in the rental unit in the presence of an adult person that appears to reside in the rental unit with the tenants. After issuing the Notice, the tenants paid only \$100.00 to the landlord in early April 2010 and continue to reside in the rental unit.

The landlord requested compensation for unpaid rent for March 2010, less the \$100.00 payment received, and loss of rent for April and May 2010.

As evidence for the hearing, the landlord provided documentary evidence related to the registered mail sent to the tenant and the rent cheque that was returned for insufficient funds. To corroborate the verbal testimony, the landlord was requested to provide a copy of the written tenancy agreement and the 10 Day Notice after the hearing. The requested documentation was received and accepted shortly after the hearing concluded.

Analysis

Upon review of the documentary evidence, I find the documentation substantiates the landlord's verbal testimony and I accept that the tenants were required to pay rent of \$900.00 on March 1, 2010 and that the rent cheque was returned for insufficient funds.

Section 88 of the Act permits a landlord to serve a document upon a tenant in various ways including leaving the document with an adult person that resides in the rental unit

and attaching the document to a conspicuous place at the rental unit. Section 71 of the Act permits a Dispute Resolution Officer to order that a document has been sufficiently served even if it was not served in a manner that complies with section 88 of the Act. In accordance with the authority afforded me under section 71 of the Act, I order the Notice was sufficiently served upon the tenants on March 14, 2010 by way of leaving the Notice on the stove in the rental unit in the presence of an adult person who apparently resides with the tenants.

Under section 46 of the Act, where a tenant is served with a 10 Day Notice, the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise the tenants are conclusively presumed to have accepted that the tenancy would end and would have to vacate the rental unit on the effective date of the Notice.

Based upon the evidence before me, I am satisfied the tenants did not pay all of the outstanding rent or dispute the Notice within five days and that the tenancy ended March 24, 2010. Since the tenants continue to occupy the rental unit, the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenants. The Order of Possession may be enforced by filing it in The Supreme Court of British Columbia.

In recognition of the \$100.00 payment made by the tenant in early April 2010 I find the landlord entitled to recover unpaid rent of \$800.00 from the tenants for March 2010 and loss of rent of \$900.00 for April 2010 and \$900.00 for May 2010. The landlord is authorized to retain the tenants' security deposit as partial satisfaction of the rent owed the landlord. I further award the landlord the filing fee paid for this application. The landlord is provided a Monetary Order calculated as follows:

Unpaid rent – March 2010 (\$900.00 - \$100.00)	\$ 800.00
Loss of rent – April 2010	900.00
Loss of rent -- May 2010	900.00
Filing fee	50.00
Less: security deposit retained by landlord	<u>(450.00)</u>
Monetary Order for landlord	\$ 2,200.00

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants.

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$2,200.00 to serve upon the tenants.

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 06, 2010.

Dispute Resolution Officer