

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and recovery of the filing fee made against two co-tenants. The tenants did not appear at the hearing. The landlord testified that he personally served the female tenant with notification of this hearing on March 31, 2010. Having been satisfied the female tenant was served in accordance with the Act, I proceeded to hear from the landlord without the tenant present.

The landlord was seeking an Order of Possession and Monetary Order against both co-tenants; however, I heard that only the female tenant was served with the hearing documents and only the female tenant signed the tenancy agreement. Therefore, I have amended the application to name only the female tenant and reference to the tenant in this decision means the female tenant.

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 if so, the amount?

Background and Evidence

The landlord provided evidence as follows. The female tenant and the landlord signed a tenancy agreement on March 1, 2008. The tenant had paid a \$550.00 security

deposit and a \$275.00 pet deposit on February 10, 2008. The tenant is required to pay rent of \$1,100.00 on the 1st day of every month. On February 23, 2010 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and personally served it upon the tenant on that day. The Notice indicates \$3,126.00 was outstanding as of January 1, 2010 and the Notice has an effective date of March 5, 2010.

Upon enquiry, the landlord testified that the balance of \$3,126.00 included outstanding rent for February 2010 and reflects outstanding rent back to May 2009. The tenant continues to reside in the rental unit. The tenant deposited \$100.00 and \$1,100.00 into the landlord's bank account in March and April 2010 respectively. The landlord testified that he did not communicate to the tenant that he would reinstate the tenancy. Rather, the landlord stated he told the tenant he would still pursue ending the tenancy.

The landlord testified that as of today's date, the tenant owes \$5,226.00 in rental arrears. As evidence, the landlord provided a copy of the Notice and upon my request, a copy of the written tenancy agreement after the hearing commenced.

Analysis

Where a tenant is served with a Notice for unpaid rent, the tenant has five days to either pay the outstanding rent or dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date. In this case, the tenant did not dispute the Notice or pay the outstanding rent within five days.

Upon review of the Notice and upon considering all of the evidence before me, I find the tenancy ended on March 5, 2010 and since the tenant continues to reside in the rental unit, the landlord is entitled to an Order of Possession. I provide an Order of

Possession for the landlord with this decision effective two days after service upon the tenant. The landlord may file the Order of Possession with the Supreme Court of British Columbia to enforce as an Order of that court.

In the absence of evidence to the contrary, I accept the landlord's submission that the tenant owed \$3,126.00 in rent up to and including the month of February 2010. Since the tenant continued to reside in the rental unit, I do not find amending the application to include loss of rent for March through May 2010 prejudices the tenant and I grant the landlord's request to recover loss of rent for March 2010 of \$1,000.00 and May 2010 of \$1,100.00. However, I offset the landlord's monetary claim by the amount of the security deposit and pet deposit and accrued interest held by the landlord. Accordingly, the landlord is hereby authorized to retain the tenant's security deposit and pet deposit and accrued interest on those deposits in partial satisfaction of the amounts owed the landlord. I also award the filing fee to the landlord.

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – up to and including February 2010	\$ 3,126.00
Loss of rent – March 2010 (\$1,100 - \$100 payment)	1,000.00
Loss of rent – April 2010 (\$1,100 - \$1,100 payment)	0.00
Loss of rent – May 2010	1,100.00
Filing fee	50.00
Less: security deposit and interest	(557.35)
Less: pet deposit and interest	<u>(278.67)</u>
Monetary Order	<u><u>\$ 4,439.98</u></u>

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

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord has been authorized to retain the tenant's security deposit, pet deposit and accrued interest in partial satisfaction of the amounts owed the landlord for rent and the landlord has been provided a Monetary Order for the balance of \$4,439.98 to serve upon the tenant.

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 14, 2010.

Dispute Resolution Officer