

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlords testified the tenant was personally served with the hearing documents at the tenant's place of employment on April 21, 2010. I accepted the landlords sufficiently served the tenant with notification of this hearing in a manner that complies with the Act and I proceeded to hear from the landlords without the tenant present.

The landlords' application named two female tenants; however, only one tenant was served with the hearing package. The Act requires that each respondent be served with notification of the claim against them and notification of the hearing. In light of the above, I amended application to name only the tenant served with the hearing package and the Orders that accompany this decision name only that tenant.

The landlord also requested the monetary claim be amended to include loss of rent for May 2010. Since I heard the tenant still resides in the rental unit, I accepted the request for amendment.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord?

Background and Evidence

The landlord provided the following evidence. The tenant signed a tenancy agreement set to commence February 1, 2009. The tenant is required to pay rent of \$1,400.00 on the 1st day of every month. The tenant paid a \$700.00 security deposit on January 21, 2009. The tenant began falling behind in rent payments in June 2009. By April 1, 2010 the tenant owed \$13,400.00 in rent. On April 3, 2010 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$13,650.00 was outstanding as of April 1, 2010 and had an effective date of April 15, 2010. The tenant did not pay the outstanding rent or dispute the Notice.

Upon enquiry, the landlords testified that they waited to serve a 10 Day Notice as the tenant made numerous promises to pay rent and had gone in for surgery so the landlords had given the tenant more time to pay the outstanding rent.

Analysis

Where a tenant receives a 10 Day Notice and does not dispute the Notice or pay the outstanding rent within five days of receiving the Notice, the tenant is conclusively presumed to have accepted that the tenancy will end and the tenant will have to vacate the rental unit by the effective date on the Notice. I accept that the tenant was served with a 10 Day Notice and did not dispute the Notice or pay the outstanding rent within five days of receiving the Notice.

Upon review of the Notice and the other evidence before me, I am satisfied that the tenancy ended on the effective date of April 15, 2010. Since the tenant continues to reside in the rental unit the landlords are entitled to an Order of Possession. With this decision I provide the landlords with an Order of Possession effective two days after service of the Order of Possession upon the tenant. The Order of Possession may also be enforced in The Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlords are entitled to recover unpaid rent of \$13,400.00 for the months of June 2009 through April 2010 and I further award the landlords loss of rent of \$1,400.00 for May 2010.

I deny the landlords' request for \$1,000.00 in late fees as the Residential Tenancy Regulation limits the amount a landlord may charge for late fees to \$25.00 per month. I find the term in the tenancy agreement that provides for late fees of \$20.00 per day violates the regulation and is therefore unenforceable.

As the landlords were largely successful with this application, I also award the filing fee to the landlords. The landlords are authorized to retain the tenant's security deposit in partial satisfaction of the rent owed. I provide for the landlords with this decision a Monetary Order calculated as follows:

Unpaid rent – June 2009 through April 2010	\$ 13,400.00
Loss of rent – May 2010	1,400.00
Filing fee	100.00
Less: security deposit	<u>(700.00)</u>
Monetary Order	<u>\$ 14,200.00</u>

The landlords 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 has been provided an Order of Possession to serve upon the tenant.

The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$14,200.00 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 26, 2010.

Dispute Resolution Officer